TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 896

FAITOUTE IRON & STEEL COMPANY, THE HOWARD SAVINGS INSTITUTION, FLORENCE W. FAITOUTE, ET AL., APPELLANTS,

vs.

CITY OF ASBURY PARK, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY

APPEAL FROM THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

FILED JANUARY 23, 1942.

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[fol. 1]

IN SUPREME COURT OF NEW JERSEY

Action at Law

FAITOUTE IRON & STEEL COMPANY, a Corporation, and MOSES W. FAITOUTE, Plaintiffs,

vs.

CITY OF ASBURY PARK, a Municipal Corporation, Defendant

NOTICE AND GROUNDS OF APPEAL—Filed April 15, 1941

To Defendant City of Asbury Park and Ward Kremer, Esq., Attorney for Defendant:

Please take notice that plaintiffs in the above entitled cause appeal to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause on the following grounds, to wit:

1. The Court erroneously granted defendant's motion to strike the complaint on the ground that it did not set forth a legal cause of action.

2. The Court erroneously granted defendant's motion to strike the complaint on the ground that plaintiffs failed to aver in their complaint that they had obtained the permission of the New Jersey Supreme Court to institute the said suit.

3. The Court erroneously granted defendant's motion to strike the complaint on the ground that the plaintiffs had not obtained permission of the New Jersey Supreme [fol. 2] Court to institute the said suit.

4. The Court erroneously granted defendant's motion to strike the complaint in that the complaint stated a legal cause of action on its face.

5. The Court erroneously granted defendant's motion to strike the complaint in that there was no defect appearing upon the face of the complaint and the alleged bases in fact and law for said motion were introduced by proof *aliunde* and the facts and matters constituting said grounds

could only be taken advantage of by an answer and were not properly the subject of a motion to strike.

6. The Court erred in granting defendant's motion to strike the complaint in that the statute of the State of New Jersey (R. S. 52:27-38) purporting to require the obtaining of permission from the New Jersey Supreme Court to bring the said suit, and upon the basis of which the said motion was granted, is unconstitutional and void in that it is a statute impairing the obligation of contracts in violation of Article I, Section 10 of the Constitution of the United States and in that it is a statute impairing the obligation of contracts and depriving a party of a remedy for enforcing a contract which existed when the contract was made in violation of Article IV, Section VII, Paragraph 3 of the Constitution of New Jersey and in that such statute deprives plaintiffs of their property without due process of law and denies plaintiffs the equal protection of the laws and abridges privileges and immunities of citizens of the United States in violation of the Fourteenth Amendment [fol. 3] to the Constitution of the United States.

7. The Court erred in granting defendant's motion to strike the complaint in that Article 7 of Title 27 of Chapter 52 of the Revised Statutes of New Jersey (1937) set forth in defendant's motion papers providing for a compulsory composition of municipal bonds purporting to be binding on plaintiffs and to wipe out the obligations sued on in the complaint herein, is unconstitutional and void in that it is a statute impairing the obligation of contracts in violation of Article I, Section 10 of the Constitution of the United States and in that it is a statute impairing the obligation of contracts and depriving a party of a remedy for enforcing a contract which existed when the contract was made in violation of Article IV, Section VII, Paragraph 3 of the Constitution of New Jersey and in that such statute deprives plaintiffs of their property without due process of law and denies plaintiffs the equal protection of the laws and abridges privileges and immunities of citizens of the United States in violation of the Fourteenth Amendment to the Constitution of the United States.

8. The Court erred in granting defendant's motion to strike the complaint in that Article 7 of Title 27 of Chapter 52 of the Revised Statutes of New Jersey (1937) set forth

in defendant's motion papers providing for a compulsory composition of municipal bonds purporting to be binding on plaintiffs and to wipe out the obligations sued on in the complaint herein was rendered nugatory and inoperative [fol. 4] and was superseded by the enactment by the Congress of the United States of an amendment to the Federal Bankruptcy Act entitled "Composition of Indebtedness of Local Taxing Agencies" approved by Act August 16, 1937, c. 657, 50 Stat. 654 as amended.

9. The Court erred in entering judgment for defendant upon its order granting defendant's motion to strike the complaint.

Respectfully yours, Arthur T. Vanderbilt, Attorney of Plaintiffs.

Sat Below:

Joseph L. Smith, C. C. J.

Service of a copy of the within Notice and Grounds of Appeal is hereby acknowledged this 12th day of April, 1941.
Ward Kremer, Attorney of Defendant.

[fol. 5] IN SUPREME COURT OF NEW JERSEY

SUMMONS—Filed December 14, 1940

The State of New Jersey to City of Asbury Park:

You are summoned to answer the annexed complaint of Faitoute Iron & Steel Company, a corporation organized under the laws of the State of New Jersey, and Moses W. Faitoute, in an action at law in the New Jersey Supreme Court, Essex County. And take notice that unless you file your answer to the said complaint with the Clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this writ and annexed complaint, the plaintiffs may proceed in this suit and judgment may be entered against you.

Witness, Thomas J. Brogan, Chief Justice of the Supreme Court, at Trenton, this ninth day of December, One Thousand Nine Hundred and Forty.

Fred L. Bloodgood, Clerk. (Seal.)

Arthur T. Vanderbilt, Attorney for Plaintiffs.

To the within named defendant:

Take notice that if the within summons and complaint be served upon you personally and you intend to make defense, then you must file an affidavit of merits within ten days of such service and must file an answer within twenty days of such service; and that in default thereof, judgment will be entered against you. Lawful service upon a corporation shall be deemed personal service.

Arthur T. Vanderbilt, Attorney of Plaintiffs.

[fol. 6] In Supreme Court of New Jersey, Essex County

Action at Law

Faitoute Iron & Steel Company, a Corporation, and Moses W. Faitoute, Plaintiffs,

vs.

City of Asbury Park, a Municipal Corporation, Defendant

Complaint—Filed December 14, 1940

Plaintiffs Faitoute Iron & Steel Company, a corporation of the State of New Jersey having its principal office and place of business in the City of Newark, Essex County, New Jersey, and Moses W. Faitoute, residing in the Township of Millburn, Essex County, New Jersey, say that:

First Count

1. Plaintiff Faitoute Iron & Steel Company is the owner and holder of fifty (50) Temporary Loan Bonds of the City of Asbury Park issued by defendant, dated April 1, 1930, and numbered 1 to 50, inclusive. Said bonds are each in the principal amount of One Thousand Dollars ($1,000.00), bore interest at the rate of five and three-quarters per cent (5¾%) per annum payable semi-annually, and were due and payable April 1, 1934.

[fol. 7] 2. None of said bonds have been paid and the sum of Fifty Thousand Dollars ($50,000.00) is due and owing thereon by defendant to plaintiff Faitoute Iron & Steel Company.

Plaintiff Faitoute Iron & Steel Company demands as damages on the First Count the sum of Fifty Thousand Dollars ($50,000.00) together with interest thereon at the rate of six per cent per annum from April 1, 1934 and costs of suit.

Second Count

1. Plaintiff Faitoute Iron & Steel Company is the owner and holder of twenty-five (25) Temporary Loan Bonds of the City of Asbury Park issued by defendant, dated June 1, 1929, and numbered 960 to 984, inclusive. Said bonds are each in the principal amount of One Thousand Dollars ($1,000.00), bore interest at the rate of six per cent (6%) per annum payable semi-annually, and were due and payable December 1, 1933.

2. None of said bonds have been paid and the sum of Twenty-five Thousand Dollars ($25,000.00) is due and owing thereon by defendant to plaintiff Faitoute Iron & Steel Company.

Plaintiff Faitoute Iron & Steel Company demands as damages on the Second Count the sum of Twenty-five Thousand Dollars ($25,000.00) together with interest thereon at the rate of six per cent per annum from December 1, 1933 and costs of suit.

Third Count

1. Plaintiff Faitoute Iron & Steel Company is the owner and holder of twenty-five (25) Temporary Loan Bonds of [fol. 8] the City of Asbury Park issued by defendant, dated June 1, 1929, and numbered 1901-1925, inclusive. Said bonds are each in the principal amount of One Thousand Dollars ($1,000.00), bore interest at the rate of six per cent per annum, payable semi-annually, and were due and payable December 1, 1934.

2. None of said bonds have been paid and the sum of Twenty-five Thousand Dollars ($25,000.00) is due and owing thereon by defendant to plaintiff Faitoute Iron & Steel Company.

3. Two interest coupons each in the amount of Thirty Dollars ($30.00), one of which was due on June 1, 1934 and the other of which was due on December 1, 1934, are

attached to each of said bonds. All of said coupons have been paid only to the extent of Seventeen Dollars and Sixty-seven Cents ($17.67) each. The balance of Twelve Dollars and Thirty-three Cents ($12.33) on each of said coupons is due and owing by defendant to plaintiff, Faitoute Iron & Steel Company. The whole sum due and owing on said coupons totals Six Hundred and Sixteen Dollars and Fifty Cents ($616.50) of which Three Hundred and Eight Dollars and Twenty-five Cents ($308.25) became due and owing on June 1, 1934 and Three Hundred and Eight Dollars and Twenty-five Cents ($308.25) on December 1, 1934.

Plaintiff, Faitoute Iron & Steel Company demands as damages on the Third Count the sum of Twenty-five Thousand Six Hundred and Sixteen Dollars and Fifty Cents ($25,616.50) together with interest at six per cent per an-
[fol. 9] num on Three Hundred and Eight Dollars and Twenty-five Cents ($308.25) of said sum from June 1, 1934 and on the balance of said sum from December 1, 1934, and costs of suit.

Fourth Count

1. Plaintiff, Moses W. Faitoute is the owner and holder of five (5) Registered Temporary Loan Bonds of the City of Asbury Park issued by defendant, dated June 1, 1929 and numbered 2135 to 2139 inclusive. Said bonds are each in the principal amount of One Thousand Dollars ($1,000.00), bore interest at the rate of six per cent per annum payable semi-annually, and were due and payable June 1, 1935.

2. None of said bonds have been paid and the sum of Five Thousand Dollars ($5,000.00) is due and owing thereon by defendant to plaintiff Moses W. Faitoute.

3. Interest was due and payable on each of said bonds in the amount of Thirty Dollars ($30.00) on each of the following dates: June 1, 1934, December 1, 1934 and June 1, 1935. None of said interest payments have been made except that Seventeen Dollars and Sixty-seven Cents ($17.67) was paid on account of each of the interest payments due on each of said bonds as aforesaid on June 1, 1934 and December 1, 1934. The balance of Twelve Dollars and Thirty-three Cents ($12.33) on each of the interest payments due on each of said bonds on June 1, 1934 and

December 1, 1934 and the whole of the interest payment of Thirty Dollars ($30.00) on each of said bonds due on June 1, 1935 is due and owing by defendant to plaintiff [fol. 10] Moses W. Faitoute. The whole sum due and owing for said interest totals Two Hundred and Seventy-three Dollars and Thirty Cents ($273.30), of which Sixty-one Dollars and Sixty-five Cents ($61.65) became due and owing on June 1, 1934, Sixty-one Dollars and Sixty-five Cents ($61.65) on December 1, 1934 and One Hundred and Fifty Dollars ($150.00) on June 1, 1935.

Plaintiff Moses W. Faitoute demands as damages on the Fourth Count the sum of Five Thousand Two Hundred and Seventy-three Dollars and Thirty Cents ($5,273.30), together with interest at six per cent per annum on Sixty-one Dollars and Sixty-five Cents ($61.65) of said sum from June 1, 1934, on Sixty-one Dollars and Sixty-five Cents ($61.65) of said sum from December 1, 1934, and on the balance of said sum from June 1, 1935, and costs of suit.

Arthur T. Vanderbilt, Attorney of Plaintiffs.

[fol. 11] In Supreme Court of New Jersey

[Title omitted]

Affidavit of Merits—Filed December 14, 1940

State of New Jersey,
County of Monmouth, ss:

Mary E. Vaccaro, of full age, being duly sworn according to law upon her oath, deposes and says:

I am the Acting City Clerk of the City of Asbury Park, a corporation organized and existing under the laws of the State of New Jersey, defendant in the above entitled cause.

The defendant, City of Asbury Park, has a legal defense to the said action, and a just and legal defense on the merits of the case.

Mary E. Vaccaro.

Subscribed and sworn to before me this 13th day of December, 1940. Helen Messler, Notary Public of New Jersey. (Seal.)

[fol. 12] In Supreme Court of New Jersey

[Title omitted]

Affidavit of Merits—Filed December 14, 1940

State of New Jersey,
County of Monmouth, ss:

Clarence E. F. Hetrick, of full age, being duly sworn according to law upon his oath, deposes and says:

I am the Mayor of the City of Asbury Park, a corporation organized and existing under the laws of the State of New Jersey, defendant in the above entitled cause.

The defendant, City of Asbury Park, has a legal defense to the said action, and a just and legal defense on the merits of the case.

Clarence E. F. Hetrick.

Subscribed and sworn to before me this 13th day of December, 1940. Helen Messler, Notary Public of New Jersey. (Seal.)

[fol. 13] In Supreme Court of New Jersey

[Title omitted]

Affidavit of Merits—Filed December 14, 1940

State of New Jersey,
County of Monmouth, ss:

Milford G. Farley, of full age, being duly sworn according to law upon his oath, deposes and says:

I am the City Manager of the City of Asbury Park, and am the agent of the City of Asbury Park, a corporation organized and existing under the laws of the State of New Jersey, defendant in the above entitled cause, and I believe that it has a just and legal defense to the said action on the merits of the case.

Milford G. Farley.

Subscribed and sworn to before me this 13th day of December, 1940. Helen Messler, Notary Public of New Jersey. (Seal.)

[fol. 14] IN SUPREME COURT OF NEW JERSEY

[Title omitted]

NOTICE OF MOTION TO STRIKE COMPLAINT—Filed January 31, 1941

To Arthur T. Vanderbilt, Esquire, Attorney for Plaintiffs:

SIR:

Please take notice that on Saturday, the 11th day of January, 1941, I shall apply to the New Jersey Supreme Court at the Essex County Court House in the City of Newark, New Jersey, at ten-thirty o'clock in the forenoon or as soon thereafter as the matter can be attended to for an order striking the complaint in the above entitled cause for the following reasons:

1. The defendant, City of Asbury Park, has in operation a refunding plan and the claims of the plaintiffs are controlled by the terms and provisions of the said refunding plan.

2. The claim of the plaintiffs is controlled by the terms and provisions of N. J. S. A. 52:27-1 *et seq.* and N. J. S. A. 52:27-34 *et seq.*

[fol. 15] 3. The plaintiffs have not obtained permission of the New Jersey Supreme Court to institute the above entitled cause of action.

Ward Kremer, Attorney for Defendant.

Dated—December 26, 1940.

IN SUPREME COURT OF NEW JERSEY

[Title omitted]

AFFIDAVIT OF MILFORD G. FARLEY—Filed January 31, 1941

STATE OF NEW JERSEY,
County of Monmouth, ss:

Milford G. Farley, of full age, being duly sworn according to law upon his oath, deposes and says:

I am the City Manager of the City of Asbury Park, a municipal corporation in the County of Monmouth. On

[fol. 16] or about March 7, 1935, the City of Asbury Park was placed under the control of the Municipal Finance Commission of the State of New Jersey, pursuant to the provisions of N. J. S. A. 52:27-1 *et seq.* The City was then in default on the payment of interest on its bonded indebtedness. On or about February 1, 1936, a plan for the refunding of the bonded indebtedness of the City of Asbury Park was filed in the New Jersey Supreme Court pursuant to the terms and provisions of N. J. S. A. 52:27-34 *et seq.*, and the New Jersey Supreme Court assumed jurisdiction over the proceedings for the refunding of the City's debt. The said refunding plan provided for the refunding of $10,750,000 of outstanding bonds of the City of Asbury Park, and included among the bonds to be refunded were all the bonds mentioned in the complaint in the above entitled cause. The said refunding plan as amended was approved by an order of the New Jersey Supreme Court July 21, 1937, and a true copy of the said refunding plan and the order approving the same are attached hereto and made a part hereof, and marked Schedule A. The said order approving the said refunding plan stated that the same was authorized and approved, provided creditors of the City of Asbury Park representing eighty-five per centum in amount of the indebtedness affected thereby should approve the said amended refunding plan in writing, in accordance with the terms and provisions of the statute in such case made and provided (N. J. S. A. 52:27-36).

On the 27th day of September, 1937, the Municipal Finance Commission of the State of New Jersey, by resolution, approved the said amended refunding plan, provided [fol. 17] the requisite number of creditors should consent thereto, in accordance with the statute in such case made and provided.

On the 29th day of April, 1938, creditors representing in excess of eighty-five per centum in amount of the indebtedness affected thereby having consented in writing to the said amended refunding plan, an order was entered in the New Jersey Supreme Court approving the said refunding plan and approving the adjustment or composition therein, in accordance with the statute in such case made and provided (N. J. S. A. 52:27-36), a true copy of which order is attached hereto and made a part hereof and marked Schedule B.

The said refunding plan was put into operation June 15, 1938, and the bondholders who had consented in writing

to the terms and provisions of the said refunding plan exchanged their outstanding bonds for new bonds issued to them in accordance with the terms and provisions of the said refunding plan.

Under the terms and provisions of the said amended refunding plan, the City of Asbury Park agreed to pay all interest on outstanding bonds at the contract rate up to and including December 31, 1933; and to pay all interest for the years 1934, 1935 and 1936, and for the first eleven months of 1937, or up until December 1, 1937, in cash, at the rate of three per cent per annum, and to issue to bondholders bonds bearing date the 1st day of December, 1937, and maturing in 1966, and bearing interest at the rate of four per cent per annum; and the said City of Asbury Park made available cash for the payment of the said delinquent interest above referred to, and paid the same to all bondholders exchanging their bonds under the terms and provisions of the said amended refunding plan.

[fol. 18] The said amended refunding plan has been in operation since June 15, 1938, and is still in operation, and all payments required to be made thereunder on bonds issued thereunder have been made, and the defendant has complied with all the requirements thereof and has complied with all its covenants with bondholders.

I am informed and verily believe that as a result of the order of April 29, 1938, and the placing in operation of the said refunding plan, the said adjustment so authorized and approved was forthwith binding upon all the creditors included in the plan whether or not they appeared in the proceeding, and that the bonds of the plaintiffs, being included in the said refunding plan, were controlled by the said plan (N. J. S. A. 52:27-37).

The said order further provided that the New Jersey Supreme Court should retain jurisdiction over the proceeding. The plaintiff has not obtained permission of the New Jersey Supreme Court to institute the present suit, and I am informed and verily believe that in accordance with the statute in such case made and provided, the plaintiffs have no legal cause of action against the City of Asbury Park (N. J. S. A. 52:27-38).

Milford G. Farley.

Subscribed and sworn to before me this 27th day of December, 1940. Mabel M. Haight, Notary Public of New Jersey. (Seal.)

REFUNDING PLAN

OF THE

City of Asbury Park

New Jersey

APPROVED BY THE NEW JERSEY SUPREME COURT ON JULY 21, 1937

October 1, 1937

I. F. HUNTZINGER CO., INC.
LAW PRINTERS
CAMDEN, NEW JERSEY

REFUNDING PLAN OF THE CITY OF ASBURY PARK, MONMOUTH COUNTY, NEW JERSEY

ARTICLE I.

Description of Refunding Bonds.

1. The Refunding Bonds to be issued and delivered by the City in exchange for a like principal amount of obligations surrendered will comprise $10,402,200 bonds authorized pursuant to an Act of the Legislature of the State of New Jersey, entitled "An Act concerning municipal finances," approved April 28, 1931, as amended and supplemented, and shall be valid and legally binding obligations of the City, and the City shall have power and be legally obligated to levy *ad valorem* taxes upon all the taxable property within the City for the payment of said bonds and interest thereon without limitation.

2. The Refunding Bonds shall be dated December 1, 1937, shall bear interest payable semi-annually, on the first days of June and December in each year, at the rate of 4% per annum until maturity on December 1, 1966. Said issue of bonds shall be redeemable as a whole or in part by lot on any interest payment date at par and accrued interest, upon notice of redemption given by publication at least once, not less than thirty days prior to the date of redemption, in a newspaper published and of general circulation in the City of New York, New York. Said bonds shall be coupon in form, registerable at the option of the holder as to principal only, or as to both principal and interest, and shall be payable in lawful money of the United States of America at the office of a banking institution or institutions in the City of Asbury Park, New Jersey, to be selected by the City, or at the option of the holder at the office of a bank or trust company in the Borough of Manhattan, City, County and State of New York, to be designated by the City in the resolution or resolutions authorizing the issuance of the Refunding Bonds. Refunding Bonds issued in exchange for less than $1,000 principal amount of Term, Serial and Other Bonds and Notes shall be in the denomination of $100 or $500

each and all other Refunding Bonds shall be in the denomination of $1,000 each. Cash payments will be made on such part of the principal amount of surrendered obligations as may be a multiple of $100.

3. Each of the Refunding Bonds shall contain a recital that it is issued for the purpose of refunding a valid and outstanding obligation of the City surrendered in exchange therefor and a provision that, in case of default in payment of the principal of or interest on such Refunding Bond, the holder thereof, shall not only have all the rights and remedies thereunder of a holder thereof, but in addition shall be reinvested with such of the rights or remedies which the holder would have had were the holder then the owner and in possession of the particular obligation so surrendered, as are specified in the resolution or resolutions authorizing the issuance of the Refunding Bond. The rights and remedies so specified in such resolution or resolutions shall consist of the remedies afforded by law and by contract for the enforcement of payment of the principal of or interest on the particular obligation so surrendered (exclusive, however, of any remedy involving the application to such payment of any receivables or other assets of the City acquired by the City prior to the issuance of the Refunding Bond), without limitation or impairment by reason of any statute enacted subsequent to the issuance of such particular obligation and prior to the issuance of the Refunding Bonds.

Said bonds shall be accompanied by the approving legal opinion, furnished at the expense of the City, of Hawkins, Delafield and Longfellow, New York City, that the Refunding Bonds will be the direct obligations of the City, payable as to both principal and interest from unlimited *ad valorem* taxes on all taxable property in the City.

ARTICLE II.

Delinquent Interest Adjustment.

In full satisfaction of all unpaid interest upon each of the $10,402,200 Term, Serial and Other Bonds and Notes of the City described in Schedule "A" annexed hereto, the City will pay in cash, a sum equal to 3% per annum for the period from January 1, 1934 to December 1, 1937, less any payments heretofore made on account of interest accruing after January 1, 1934.

ARTICLE III.

State Road Tax, Soldiers' Bonus and School Tax Bonds.

The $328,999.19 outstanding State Road Tax Funding Bonds, Soldiers' Bonus Bonds and School Tax Funding Bonds described in Schedule "A" annexed hereto will remain in their present form except that the $191,222.04 of the principal of these bonds in default shall, under agreement secured by the City, be paid in approximately equal annual instalments from 1938 to 1942, inclusive, and the City shall pay or adjust the past due interest.

ARTICLE IV.

Obligations of the City held by the Sinking Fund Commission of the City of Asbury Park.

The $781,329.50 obligations of the City held by the Sinking Fund Commission of the City, with all appurtenant and unmatured coupons attached, shall be delivered by the Sinking Fund Commission to the City and immediately cancelled by the City and all rights of bondholders therein released.

ARTICLE V.

Tax Levy for Debt Service, Etc.

Until the bonds herein refunded are paid, the City shall be required to appropriate annually and levy in its budget annually, the sum of $630,000 for debt service, including debt service required for bonds mentioned in Article III.

ARTICLE VI.

Revolving Fund.

As a bondholder's security feature of this plan, the City shall maintain in a National or State Bank to be designated by the City's governing body, a special account to be known as the "Revolving Fund," which shall be a reserve for financing the future operations of the City. The initial payment to be made into the Revolving Fund

shall consist of $225,000, which is the amount reserved from the available cash for working capital. Additional payments would be made into the Revolving Fund during the life of the bonds. These additional payments would consist of:

(a) All sums received in payment of taxes levied prior to January 1, 1938, whether received as taxes, as redemption of tax liens, or as realizations upon foreclosed property.

(b) All taxes levied in any year after 1937 which may be collected after all budgetary appropriations of the year have been met and in any event after the close of the year of the levy so that, *e. g.*, in substance, all 1938 taxes collected in 1938 and subsequent years will be paid into the Revolving Fund.

Since the City now collects only about 53% of its current tax levy during the year of levy and therefore cannot meet its operation expenses and State and County taxes and pay its debt service solely from current tax collections, the City may withdraw from the Revolving Fund from time to time, such amount as may be necessary to meet these payments required under its current budget. Upon making any such withdrawal, the City would place in the Revolving Fund, a certificate of withdrawal, showing the date and amount of the withdrawal. As taxes of that year are thereafter paid into the Revolving Fund, as above required, the amount of the payment will be credited on such certificate of withdrawal. If, at the end of the third year after the tax levy, the credits so made have not entirely discharged the certificate of withdrawal, the City will be obliged to raise by tax, the remainder of the certificate, and before the end of the fourth year, pay it into the Revolving Fund.

If, at the end of any year, the cash in the Revolving Fund exceeds $225,000.00, the amount of the excess will be withdrawn from the Revolving Fund and one-half of the excess will be put into the Debt Service Fund and the other half of the excess will be returned to the City, which may use it for reduction of the next year's tax levy.

Duplicate deposit slips and certificates of withdrawal will be transmitted to the Fiscal Agent by the City. The transactions of the Fund

shall be audited by a Registered Municipal Accountant, who shall be satisfactory to the Fiscal Agent and any improper application of funds pledged to, in, or withdrawn from the Fund, shall be remedied by immediate mandatory levy and payment into the Revolving Fund of the amount involved.

ARTICLE VII.

Debt Service Fund.

1. The City shall in each year provide budgetary appropriation for, and before each of the following dates in such year, pay in cash into the Debt Service Fund, an amount which, together with any amount therefore paid into the Debt Service Fund pursuant to this section in and for such year, will at least equal the amount set opposite each date in the following table:

Date	Amount
May 15	$250,000.00
August 15	450,000.00
November 15	630,000.00

Should the City fail in any year to pay into the Debt Service Fund, the full amount required by this section, the City shall include in the next succeeding tax levy in addition to all other amounts included therein required by law or by contract, or by any other provision of this resolution, an amount to be collected and paid into the Debt Service Fund sufficient to make up the said deficiency in the preceding year's payment, and thereafter, until said deficiency shall be made up, the City shall segregate and set aside out of each payment of taxes made under such tax levy, the proportion thereof which the amount so included in such tax levy, bears to the total of such tax levy, and shall immediately pay the amount so segregated and set aside into the Debt Service Fund.

2. The City shall appropriate and pay into the Debt Service Fund an additional dollar for every dollar by which the City's appropriation may exceed the amounts hereinafter designated for School Tax and City Operations, as follows:

Year	Operating Expenditures of the City	Total Tax Levy for School Purposes
1938	$757,000.00	$185,000.00
1939	772,000.00	200,000.00
1940	787,000.00	210,000.00
1941 and subsequent years	802,000.00 each	220,000.00 each

Provided, however, that if any increased appropriations are occasioned by, or for capital outlays, emergency relief, pensions, or mandatory salary increases, no increases for such sums shall be made in the appropriations for debt service.

3. The City shall maintain the Debt Service Fund in a depository to be designated by the City's governing body, such depository to act as the City's Fiscal Agent, in which fund shall be deposited, all funds accruing for the payment of debt service on the Refunding Bonds. The Debt Service Fund shall be applied by the Fiscal Agent to the payment of interest on bonds as same become due, but whenever the amount on hand exceeds the amount of such interest as will accrue within six months, the amount of the excess will be applied to the retirement of refunding bonds by call for tenders of bonds at less than par, or if no such tenders are received, by the call of bonds by lot for redemption. The Fiscal Agent shall have the power to enforce, by appropriate action, the duty of the City to make provision for, and to pay into the Revolving Fund or Debt Service Fund, all sums required of the City under the proposed plan of refunding. Duplicate deposit and withdrawal slips on the Revolving Fund shall be forwarded to the Fiscal Agent at the time of the Deposit or withdrawal. The Fiscal Agent shall be empowered to engage a Registered Municipal Accountant at the expense of the City, for the purpose of making interim audits of the transaction of the Revolving Fund.

ARTICLE VIII.

Reserve for Uncollectible Taxes.

1. There shall be included in each budget of the City, an appropriation under the caption "Reserve for Uncollectible Taxes" in an

amount not less than one-fifth of the amount of taxes levied in the City for next preceding year, which remained uncollected at the end of such next preceding year.

ARTICLE IX.

1. The City shall covenant and agree, upon the issuance of said Refunding Bonds, fully to carry out and perform all the provisions of Articles V, VI, and VII, and said provisions shall be a part of the contract with the holders of such Refunding Bonds, and shall be enforceable by mandamus or other appropriate action or proceedings at law or in equity instituted by any holder of any Refunding Bond in behalf of all holders of Refunding Bonds, whether or not there shall have been any default in the payment of the principal of or interest on any such Refunding Bond.

2. The City shall covenant and agree, upon the issuance of said Refunding Bonds, to carry out and perform all the provisions as previously outlined herein, so that such provisions would be definitely a part of the contract with the bondholders.

In addition to the proposed provisions already mentioned, the City shall further covenant and agree (a) to hold annual tax sales in the manner prescribed by law and not later than November 1st of each year; (b) proceedings to foreclose tax and other title liens at the earliest time permitted by law; (c) to offer at public sale each year, in accordance with law, all real estate held by the City in fee; and (d) to not accept bonds, notes or other obligations of the City in payment of, or discharge of taxes, or of other receivables of the City.

ARTICLE X.

This Refunding Plan was adopted by the City, upon the authorization of the Supreme Court of New Jersey, and the Municipal Finance Commission of the State of New Jersey, after extensive negotiations with creditor's groups. The City undertakes to secure the formal legal approval of this Refunding Plan by such State authorities as are required by the Laws of the State of New Jersey.

SCHEDULE A.

RESOLUTION AUTHORIZING THE ISSUANCE OF REFUNDING BONDS OF THE CITY OF ASBURY PARK, IN THE COUNTY OF MONMOUTH, NEW JERSEY.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASBURY PARK, IN THE COUNTY OF MONMOUTH, NEW JERSEY, as follows:

ARTICLE I.

Authorization of Refunding Bonds.

For the purpose of funding or refunding an equal amount of the bonds and notes of the City of Asbury Park, in the County of Monmouth, New Jersey (hereinafter referred to as "City"), set forth and described in Article III of this resolution, bonds of the City, each to be known as "Refunding Bond," are hereby authorized to be issued in the aggregate principal amount of $10,735,199.19 pursuant to an Act of the Legislature of the State of New Jersey, entitled: "An Act concerning municipal finances," approved April 28, 1931, constituting Chapter 340 of the Laws of 1931, and the acts amendatory thereof and supplemental thereto.

ARTICLE II.

Description of Refunding Bonds.

SECTION 1. Said Refunding Bonds shall be dated December 1, 1937, shall bear interest at the rate of four per centum (4%) per annum, payable semi-annually on the first days of June and December in each year until maturity, shall mature December 1, 1966, shall be coupon in form, registerable at the option of the holder as to principal only or as to both principal and interest, shall be payable in lawful money of the United States of America, at the office of the Asbury Park & Ocean Grove Bank, in the City of Asbury Park, New Jersey, or, at the option of the holder, at the office of the Central Hanover Bank & Trust Company, in the Borough of Manhattan, City, County, and

State of New York, shall be signed by the Mayor, the City Treasurer and the City Manager, under the seal of the City, attested by the City Clerk, and the coupons annexed thereto shall be authenticated by the facsimile signature of said City Treasurer. Said Refunding Bonds, in addition to the other matters hereinafter stated, shall recite the title of the Act in pursuance of which they are issued and due compliance with all conditions precedent to their issuance, including debt and other limitations, and said Refunding Bonds shall be in such denominations and otherwise be in such form as may be determined by resolution. Said issue of Refunding Bonds shall be redeemable as a whole or in part by lot on any interest payment date at par and accrued interest, upon notice of redemption given by publication at least once at least thirty days prior to the date of redemption in a newspaper published and of general circulation in the City of New York, New York.

SECTION 2. Each of the Refunding Bonds which may be issued in exchange for any of the bonds and notes described in Article III of this resolution, shall contain a recital that it is issued for the purpose of funding or refunding a valid and outstanding obligation of the City surrendered in exchange therefor, and also a provision that, in case of default in payment of the principal of or interest on said Refunding Bond, the holder thereof shall not only have all the rights and remedies thereunder of a holder thereof, but in addition shall be reinvested with such of the rights and remedies which the holder would have had were the holder then the owner and in possession of the particular obligation so surrendered as are hereinafter in this section specified. Such rights and remedies are hereby specified as the remedies afforded by law and by contract for the enforcement of the payment of the principal of or interest on the particular obligation so surrendered (exclusive, however, of any remedy involving the application to such payment of any receivables or other assets of the City acquired by the City prior to the issuance of the Refunding Bond), without limitation or impairment by reason of any statute of the State of New Jersey enacted subsequent to the issuance of such particular obligation and prior to the issuance of the Refunding Bond, including specifically (if enacted during such period) Chapters 266 and 331 of the Laws of 1933 of the State of New Jersey, except to

the extent that any such act may have prior to such surrender legally and constitutionally affected the remedies of the person who was then the owner and in possession of the particular obligation so surrendered.

SECTION 3. Said Refunding Bonds shall be direct unlimited obligations of the City, and the City shall be obligated to levy *ad valorem* taxes upon all the taxable property within the City for the payment of the bonds and interest thereon without limitation of rate or amount, and the full faith and credit of the City shall be and is hereby pledged for the punctual payment of the principal of and interest on said Refunding Bonds.

ARTICLE III.

Debt to be Refunded.

SECTION 1. It is hereby found, determined and recited that the bonds and notes of the City described below are outstanding and unpaid; that said bonds and notes are valid and legally binding obligations of the City payable as to both principal and interest from unlimited *ad valorem* taxes upon all the taxable property within the City; that the principal amount of said bonds and notes are due or to become due to the several holders thereof; that the Municipal Finance Commission of the State of New Jersey, acting in and for the City, and functioning in pursuance of the Act cited in Article I of this resolution, after public hearing duly held after public notice, has found said bonds and notes to be outstanding and unpaid and to be due or to become due; and that said bonds and notes so described do not include any bonds or notes held by the Sinking Fund Commission of the City:

(a) Term Bonds.

Title, Designation or Purpose	Date of Issue	Annual Maturities Amount	Date	Principal Outstanding
School	7- 1-07		7- 1-37	$99,000.00
School	1- 1-13		1- 1-43	170,000.00
Sewer	9- 1-05		9- 1-45	33,000.00
Sewer	7- 1-07		7- 1-42	71,000.00
Sewer	5- 1-09		5- 1-44	35,000.00
Sewer	7- 1-12		7- 1-47	70,000.00
Fire	5- 1-09		5- 1-44	15,000.00
Beach	7- 1-07		7- 1-47	150,000.00
Beach	1- 1-11		7- 1-51	134,000.00
Water	4- 1-06		4- 1-36	22,000.00
Total Term Bonds				$799,000.00

(b) Serial and Other Obligations.

Tax Revenue Bonds, 1930	12- 5-30		12- 1-33	$105,000.00
Tax Revenue Bonds, 1931	6- 2-33		12- 2-33	76,000.00
Tax Revenue Bonds, 1932	6- 2-33		12- 2-33	317,000.00
Tax Revenue Bonds, 1932	6- 2-33		12- 2-33	2,000.00
Tax Revenue Bonds, 1933	9-15-33		3-15-34	2,000.00
Temporary Street Assessment Bonds	10- 1-28	$155,000.00	4- 1-34	
		50,000.00	4- 1-35	
		50,000.00	4- 1-36	
		50,000.00	4- 1-37	
		50,000.00	4- 1-38	355,000.00
School	6-20-24	$2,000.00	6-20-34—40	
		1,000.00	6-20-41—42	16,000.00
High School (Sunset Ave.)	9- 1-26	$20,000.00	9- 1-33	
		10,000.00	9- 1-34	
		20,000.00	9- 1-35—46	
		30,000.00	9- 1-47—58	
		13,000.00	9- 1-59	
		30,000.00	9- 1-60—65	
		28,000.00	9- 1-66	851,000.00
School	1- 1-28	$6,000.00	1- 1-34—38	
		7,000.00	1- 1-39	
		9,000.00	1- 1-40—66	226,000.00
School	11- 1-30	$6,000.00	11- 1-33—39	

		$7,000.00	11- 1-40	
		9,000.00	11- 1-41—55	184,000.00
Municipal Improvement	9- 1-17	$1,000.00	9- 1-33	
		5,000.00	9- 1-35—38	21,000.00
Public Improvement	11-15-26	$27,000.00	11-15-33—38	
		25,000.00	11-15-39	187,000.00
Improvement	5- 1-22	$6,000.00	5- 1-34—39	36,000.00
Street Improvement	10-15-28	$12,000.00	10-15-33—39	
		15,000.00	10-15-40	
		17,000.00	10-15-41—46	
		13,000.00	10-15-47	214,000.00
Floating Indebtedness	12-31-20	$5,000.00	12-31-33	
		5,000.00	12-31-35—40	35,000.00
Beach	7- 1-25	$14,000.00	7- 1-34	
		19,000.00	7- 1-35—45	
		20,000.00	7- 1-46	
		9,000.00	7- 1-47	252,000.00
Jetty	10- 1-22	$3,000.00	10- 1-34—43	
		2,000.00	10- 1-44—53	50,000.00
Water Consolidated Improvement	7- 1-25	$4,000.00	7- 1-34—60	
		5,000.00	7- 1-61—64	
		3,000.00	7- 1-65	131,000.00
Memorial Golf Course	9- 1-19	$2,500.00	9- 1-34—69	90,000.00
Memorial Golf Course	6- 1-21	$1,000.00	6- 1-50—72	23,000.00
Memorial Golf Course	4- 1-22	$500.00	4- 1-50—73	12,000.00
General Improvement Series "A"	5- 1-30	$8,000.00	5- 1-34—50	
		12,000.00	5- 1-51—76	376,000.00
General Improvement Series "B"	5- 1-30	$17,000.00	5- 1-34	
		15,000.00	5- 1-35	
		17,000.00	5- 1-36—53	
		24,000.00	5- 1-54	
		25,000.00	5- 1-55—70	762,000.00
General Improvement Series "C"	11- 1-30	$25,000.00	11- 1-33—38	
		30,000.00	11- 1-39—44	
		35,000.00	11- 1-45—57	$785,000.00

Refunding Series "A"	7- 1-33	$2,000.00	7- 1-34	
		1,000.00	7- 1-35—38	6,000.00
Refunding Series "A"	7- 1-33	$1,000.00	7- 1-34—36	3,000.00
Refunding Series "A"	7- 1-33	$2,000.00	7- 1-34	
		3,000.00	7- 1-35	
		4,000.00	7- 1-36—41	
		3,000.00	7- 1-42	
		2,000.00	7- 1-43	34,000.00
Refunding Series "B"	7- 1-33	$1,000.00	7- 1-34—39	6,000.00
Refunding Series "B"	7- 1-33	$3,000.00	7- 1-34—37	12,000.00
Refunding Series "B"	7- 1-33	$4,000.00	7- 1-38—39	8,000.00
Refunding Series "B"	7- 1-33	$5,000.00	7- 1-40—43	20,000.00
Refunding Series "A"	9- 1-33	$1,000.00	9- 1-34—41	8,000.00
Refunding Series "B"	9- 1-33	$2,000.00	9- 1-34—35	
		1,000.00	9- 1-36	5,000.00
Refunding Series "B"	9- 1-33	$1,000.00	9- 1-37—39	
		2,000.00	9- 1-40	5,000.00
Refunding Series "B"	9- 1-33	$2,000.00	9- 1-41	2,000.00
Refunding Series "B"	9- 1-33	$1,000.00	9- 1-42	1,000.00
Refunding Series "B"	9- 1-33	$2,000.00	9- 1-43	2,000.00
Refunding 1930 Tax Revenue Bonds	12-10-33	$18,000.00	12-10-38—40	
		25,000.00	12-10-41—42	104,000.00
Consolidated Improvement Casino	6- 1-29	.....	12- 1-33	377,000.00
Consolidated Improvement Casino	6- 1-29	.....	12- 1-34	980,000.00
Consolidated Improvement Casino	6- 1-29	.....	6- 1-35	1,000,000.00
Consolidated Improvement Casino	4- 1-30	.....	4- 1-34	460,000.00
Library-Repairs and Furnishing ..	1-10-33	.....	1-10-36	5,000.00
Temporary Loan	4- 1-33	.....	4- 1-36	200,000.00
Convention Hall and Theatre	9- 1-33	.....	12- 1-33	650,000.00
Foot Bridges, Wesley Lake, O. G. C. M. Ass'n	9-22-33	.....	9-22-34	10,000.00
Consolidated Improvement Casino	9- 1-33	.....	12- 1-33	500,000.00
Consolidated Improvement Casino	12- 1-33	.....	6- 1-34	96,000.00
Water Tower	8-15-33	.....	8-15-35	5,200.00
Total Serial and Other Obligations				$9,607,200.00

(c) State Tax Funding Bonds.

Funding 1930-1932 State School Tax	3- 8-34	$40,222.92	3- 8-35—37	
		40,222.93	3- 8-38—39	$201,114.62
Funding 1931-1932-1933 State Road Tax	7-15-34	$13,308.24	7-15-35	
		14,000.00	7-15-36—42	111,308.24
Funding 1931-1932-1933 Soldiers' Bonus Tax	7-15-34	$2,576.33	7-15-35	
		2,800.00	7-15-36—40	16,576.33
Total State Tax Funding Bonds				$328,999.19
GRAND TOTAL				$10,735,199.19

SECTION 2. The authorization in Article I of this resolution of the funding or refunding of bonds or notes shall be deemed to include authorization of the *pro tanto* funding or refunding of any judgments for the principal amount of such bonds or notes.

ARTICLE IV.
Special Funds.

SECTION 1. The City hereby establishes and, until payment of all Refunding Bonds shall be made or provided for in cash, shall maintain the following funds:

(a) A reserve fund for the financing of future operations of the City, and also, to the extent hereinafter provided, for the payment of the Refunding Bonds, denominated and hereinafter referred to as "Revolving Fund"; and

(b) A reserve or sinking fund solely for the payment and security of the principal of and interest on the Refunding Bonds, denominated and hereinafter referred to as "Debt Service Fund."

SECTION 2. The Debt Service Fund shall be and remain in the custody of the Fiscal Agent hereinafter provided for on the terms and conditions of this resolution.

SECTION 3. The Revolving Fund, and the moneys and funds held or credited or required to be held or credited therein, shall be

segregated from all other moneys and funds of the City and shall be treated by all officers of the City as moneys and funds held in trust solely for the purposes of the Revolving Fund. Such fund shall be kept in a separate bank account held in trust for the purposes herein named and shall not be commingled with any other moneys unless lawfully secured by deposit with the Fiscal Agent of direct obligations of the United States of America or of the State of New Jersey having a market value equal to or exceeding the amount of the fund. With respect to the Revolving Fund, the City shall comply with and perform the provisions of Section 307 of an Act of the Legislature of the State of New Jersey, entitled: "An Act concerning municipal and county finances (Revision of 1936)," approved June 24, 1936, constituting Chapter 211 of the Pamphlet Laws of 1936. At its expense and cost, the City shall cause an audit to be made at least once in each month by a Registered Municipal Accountant of the State of New Jersey named by or satisfactory to the Fiscal Agent of all transactions of or in any way affecting the Revolving Fund during the preceding calendar month and shall cause a duplicate original of the report of each such monthly audit to be delivered to the Fiscal Agent. The report of the audits made for the months of June and December in each year shall contain a summary of the audits made for the six months ending with such month. At its expense and cost, the City shall cause such summaries of audits to be published within fifteen days in its official newspaper.

ARTICLE V.

The Fiscal Agent.

Section 1. The Hudson County National Bank of Jersey City, New Jersey, and the Asbury Park & Ocean Grove Bank of Asbury Park, New Jersey, collectively, are hereby appointed Fiscal Agent on the terms and conditions hereinafter set forth, for the benefit and security of the City and all holders of Refunding Bonds of said City. In the event that either of said institutions shall not act or be acting as such Fiscal Agent, the appointment of the other of said institutions shall be automatically and simultaneously revoked, and a successor Fiscal Agent shall thereupon be appointed in accordance with the terms of Section 5 of this Article. Notwithstanding the foregoing appointment of both of said institutions collectively as Fiscal Agent, each of said institu-

tions shall have full power as if it were sole Fiscal Agent to take any and all action authorized hereunder to enforce any agreement or covenant of the City made in this resolution or any legal obligation of the City with respect to the Refunding Bonds.

SECTION 2. The Fiscal Agent shall have power (in addition to and not in substitution for the right of any individual holders of Refunding Bonds to exercise the same power) but shall not be under any duty, to enforce, by mandamus or other appropriate action or proceeding at law or in equity, in the name of, and with the consent of a holder of Refunding Bonds, the duty of the City to make provision for, and pay into the Revolving Fund or Debt Service Fund all sums required of the City under this resolution to be paid into the Revolving Fund or the Debt Service Fund, but any such suit, action or proceeding, in so far as the Fiscal Agent is concerned but not in so far as individual holders of Refunding Bonds are concerned, shall be abandoned, dismissed, continued, amended or otherwise changed upon request filed with the Fiscal Agent by the holders of two-thirds in principal amount of the Refunding Bonds then outstanding. Any such request, and the right and qualification of any person, partnership or corporation to make such request, may be conclusively evidenced by a written instrument, purporting to be signed by such person, partnership or corporation, and signed by a bank, banker or trust company within ninety days prior to the filing thereof, describing the Refunding Bonds claimed to be held by such person, partnership or corporation, and stating that such Refunding Bonds were exhibited by such person, partnership or corporation to an officer of such bank, banker or trust company at a date within such period of ninety days.

SECTION 3. All moneys held in or credited to the Debt Service Fund shall be held by the Fiscal Agent and all other banks or trust companies in trust for the purposes herein named, and shall not be commingled with any other moneys whatsoever unless and until lawfully secured by direct obligations of the United States of America or of the State of New Jersey, having a market value equal to or exceeding the amount of such moneys.

SECTION 4. The Fiscal Agent shall be entitled to reasonable compensation for its services in the administration of the Debt Service Fund and acting as such Fiscal Agent, and to reimbursement of its

reasonable expenses, and the City shall promptly pay such compensation and make such reimbursement to the Fiscal Agent.

SECTION 5. The City may at any time by resolution of the City Council revoke the appointment as Fiscal Agent of the Hudson County National Bank and the Asbury Park & Ocean Grove Bank, collectively, or of any successor Fiscal Agent. In the event that for any reason the Fiscal Agent or any successor Fiscal Agent shall not act or be acting as Fiscal Agent, within fifteen days the City shall by resolution of the City Council appoint a successor Fiscal Agent. If the City shall, for any reason, fail so to appoint a successor Fiscal Agent within such period of time, any holder of Refunding Bonds may deliver to the City Clerk or any other officer of the City, an instrument in writing appointing a successor Fiscal Agent in accordance with this resolution. The first appointment so filed shall control, and the City shall not be entitled to revoke such appointment for a period of one year thereafter. Any such successor Fiscal Agent shall be a single bank or trust company having its principal office in the State of New Jersey, and no such bank or trust company shall be appointed as such successor Fiscal Agent unless it shall appear from its last statement of condition next preceding its appointment, given pursuant to call of officials of the United States of America or of the State of New Jersey, that its capital, surplus and undivided profits aggregate not less than $3,000,000. In the event of the appointment of a successor Fiscal Agent, as in this section provided, the then Fiscal Agent shall surrender all the moneys, funds, certificates and other assets held by it hereunder to the successor Fiscal Agent and take its receipt therefor, which receipt shall be deemed to constitute a release in full of all liabilities and duties hereunder of the then Fiscal Agent.

SECTION 6. The recitals of fact herein and in the Refunding Bonds contained shall be taken as the statement of the City and the Fiscal Agent shall be under no responsibility for the correctness of the same. The Fiscal Agent shall be protected in acting upon and shall be entitled to assume and rely on the accuracy, correctness and genuineness of any notice, resolution, certificate, statement, report, accounts and other documents furnished it by the City, which are signed by its Mayor or City Manager under its seal, attested by its City Clerk. The Fiscal Agent may consult with counsel and the opinion of such counsel shall be full and complete authorization and protection in respect of any

action taken or suffered by the Fiscal Agent hereunder in good faith and in accordance with the opinion of such counsel. The Fiscal Agent may execute any of the duties or powers hereof and perform any duty hereunder either itself or by or through its attorney, agent or employees, and it shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorney, agent or employees, if reasonable care has been exercised in the appointment and retention thereof, nor shall the Fiscal Agent be otherwise answerable or accountable under any circumstances whatsoever except for its own gross negligence or affirmative misconduct.

ARTICLE VI.

Debt Service Fund and Retirement of Refunding Bonds.

SECTION 1. The City shall in each year provide budgetary appropriation for, and before each of the following dates in such year pay in cash into the Debt Service Fund, an amount which, together with any amount theretofore paid into the Debt Service Fund pursuant to this section in and for such year, will at least equal the amount set opposite such date in the following table, as such amount may be affected by the operation of Section 2 and Section 3 of this Article:

Date	Amount
May 15	$250,000
August 15	450,000
November 15	630,000

SECTION 2. The amount in any of the following years to be provided by budgetary appropriation and paid before November 15 in cash into the Debt Service Fund by the City pursuant to Section 1 of this Article shall be further increased in such year, if necessary, so that it will at least equal the larger of the two following amounts which may be required in such year:

(a) In the year 1947 and each year thereafter, in order to assure payment of the principal of and interest on the Refunding Bonds at or before maturity, an amount computed annually by multiplying the principal amount of all Refunding Bonds outstanding on January 1 of such year and not then called for prior redemption, by the factor set opposite such year in the following table:

Year	Factor	Year	Factor
1947	.0735817	1957	.1232909
1948	.0761386	1958	.1344930
1949	.0789933	1959	.1485278
1950	.0821985	1960	.1666096
1951	.0858200	1961	.1907619
1952	.0899411	1962	.2246271
1953	.0946690	1963	.2754900
1954	.1001437	1964	.3603485
1955	.1065522	1965	.5301961
1956	.1141490	1966	1.0000000

(b) In each year, the amount required pursuant to Section 1 of this Article plus an amount equal to the amount by which the sum of the budgetary appropriations for operating expenditures of the City, or the total tax levy for local school purposes, for such year exceeds the amount specified for such purpose for such year in the following table:

Year	Operating Expenditures of the City	Total Tax Levy for Local School Purposes
1938	$757,000.	$185,000.
1939	772,000.	200,000.
1940	787,000.	210,000.
1941 and subsequent years	802,000. each	220,000. each

For the purpose of this paragraph (b), the term "operating expenditures of the City" shall mean all expenditures authorized by virtue of the budget, tax resolution or ordinance or tax levy in the City, including without limitation of the foregoing, all expenditures on account of any municipal enterprise or utility, whether owned or operated by the City or by a Commission or other public body established by statute, including without limitation of the foregoing the beach front, the golf course and the water supply and distribution system, excepting only (1) interest and debt redemption charges; (2) expenditures for the construction or acquisition of any improvement of a permanent nature which, but for debt limitations, could be legally financed by the issuance of bonds; (3) expenditures for poor relief for which any expenditure or contribution (by a grant or loan of money or by providing

labor, supplies, material or supervision, or otherwise) may be made by or may be sought from any officer, board, agency or commission of the State of New Jersey or of the United States of America, such as the President, the Federal Emergency Administration of Public Works, the Works Progress Administration, the Reconstruction Finance Corporation, and any successor or successors thereof, or any officers, boards, agencies or commissions heretofore or hereafter constituted for similar purposes with similar powers; (4) State, County and local school district taxes; (5) reserves; (6) expenditures in excess of the amount required by law on account of pension funds for employees of the City; and (7) in the years 1938, 1939 and 1940, any excess (not exceeding $45,000 in the year 1938, $30,000 in the year 1939, and $15,000 in the year 1940) of expenditures for compensation of present officers and employees of the City, or their successors, (but not of additional officers or employees) over the expenditures for the same purpose in the year 1936, if the excess is made necessary solely by the lapsing or expiration of, or the failure of the Legislature of the State of New Jersey to renew, extend or substantially reenact, the acts of the State of New Jersey cited as Chapters 14, 16, 17, or 18 of the Laws of 1933, as heretofore amended. For the years 1938, 1939 and 1940, the amount specified in the foregoing table for the total tax levy for local school purposes may be increased, if necessary, by the amount of any excess (not exceeding $35,000 in the year 1938, $20,000 in the year 1939, and $10,000 in the year 1940) of expenditures for compensation of present officers, teachers and employees of the Board of Education of the City, or their successors, (but not of additional officers, teachers or employees) over the expenditures for the same purpose in the year 1936, if the excess is made necessary solely by the lapsing or expiration of, or the failure of the Legislature of the State of New Jersey to renew, extend or substantially reenact, the act of the State of New Jersey cited as Chapter 12 of the Laws of 1933, as heretofore amended.

Section 3. The gross amount in any of the years 1938, 1939, 1940, 1941 and 1942 to be provided by budgetary appropriation and paid before November 15 in cash into the Debt Service Fund by the City pursuant to Section 1 of this Article, as such amount may be affected

by the operation of Section 2 of this Article, may be reduced in such year by the amount of any appropriation made in the budget of such year for the payment of principal of or interest on the State Tax Funding Bonds of the City described in subdivision (c) of Section 1 of Article III of this resolution; *provided, however,* that such amount so to be provided and paid shall not in any event be reduced in any year below the amount of all interest payable in such year on all Refunding Bonds outstanding on January 1 of such year and not then called for prior redemption.

SECTION 4. Should the City fail in any year to pay into the Debt Service Fund the full amount required by Section 1 of this Article, as such amount may be affected by the operation of Section 2 and Section 3 of this Article, the City shall include in the next succeeding tax levy in addition to all other amounts included therein required by law or by contract or by any other provision of this resolution, an amount to be collected and paid into the Debt Service Fund sufficient to make up the said deficiency in the preceding year's payment, and the City on or before August 1 of the year of such tax levy shall pay the full amount so included in such tax levy into the Debt Service Fund.

SECTION 5. The City shall pay into the Debt Service Fund the moneys required to be transferred thereto from the Revolving Fund pursuant to Section 4 of Article VII of this resolution.

SECTION 6. The Fiscal Agent shall apply the available moneys in the Debt Service Fund to the payment of all interest becoming due on the outstanding Refunding Bonds not otherwise provided for but whenever the available moneys in the Debt Service Fund shall exceed the amount of all interest which will accrue on the outstanding Refunding Bonds during the next ensuing six months and are not less than the amount of all interest which will become due on the outstanding Refunding Bonds during the then current year, the Fiscal Agent shall apply the available moneys in excess of such amount to the retirement of Refunding Bonds, as provided in Section 7 of this Article of this resolution.

SECTION 7. At any time when the City is not in default in making any payments required by this Article and there are available in the Debt Service Fund monies applicable to the retirement of Refunding Bonds (hereinafter referred to as "applicable monies"), the Fiscal

Agent may in its discretion and shall within fifteen days, if requested by resolution of the City Council of the City, or if on March 1 or September 1 of any year the applicable monies exceed $25,000, call for public tenders of Refunding Bonds at not exceeding par and accrued interest and use such applicable monies as in this section provided. Not more than thirty nor less than fifteen days prior to the date fixed for the receipt of tenders, the Fiscal Agent shall cause to be published in a financial newspaper published in the Borough of Manhattan, City, County and State of New York, a notice in the name of the City stating the amount of applicable monies, inviting tenders of Refunding Bonds, and fixing a time and place at which such tenders will be received by the Fiscal Agent. Such tenders of Refunding Bonds shall be enclosed in plain sealed envelopes marked "Tender of Refunding Bonds," and shall be opened by the Fiscal Agent in public on the date fixed in the notice inviting tenders. An officer of the City designated by resolution of the City Council shall be entitled to attend, and except in the case of tenders received between March 15 and April 15 and between September 15 and October 15 of each year, such officer may after the opening of the tenders require the Fiscal Agent to reject all tenders, or all tenders in excess of a certain price to be fixed by such officer. Subject to the exercise of this right of rejection, as much of the applicable monies as the acceptable tenders permit shall be applied immediately to the purchase of Refunding Bonds tendered at the lowest prices submitted. In the event that a greater amount of Refunding Bonds is tendered at the same price than can be purchased with the applicable monies (after all bonds tendered at lower prices, if any, shall have been purchased), then any of the Refunding Bonds so tendered at said price shall be purchased at said price in such manner and order as the Fiscal Agent shall prescribe. The Fiscal Agent shall apply the available applicable monies on hand on April 15 and October 15 of any year, unless such monies do not exceed $25,000, to the redemption by lot on the next succeeding interest payment date of as many as the amount of such monies permit of Refunding Bonds and shall cause notice of redemption of such Refunding Bonds to be published in the manner and time provided in such Refunding Bonds. All Refunding Bonds purchased or redeemed shall be cancelled by the Fiscal Agent and delivered to the City Treasurer or City Clerk.

ARTICLE VII.

Revolving Fund and Future Operation.

SECTION 1. From time to time as the same may be collected or realized, the City shall pay into the Revolving Fund:

(a) Collections or receipts of all special assessments on property in the City specially benefited heretofore or hereafter confirmed on account of any improvement financed or undertaken prior to January 1, 1937;

(b) Collections or receipts of all taxes levied on property in the City for the year 1936 or any prior year; and

(c) After all expenditures or disbursements required by virtue of the budget, tax resolution or ordinance or tax levy in the City for the year 1937 and each of the several subsequent years have been made or provided for, all collections or receipts of taxes levied on property in the City for such year, and of other revenues anticipated for such year, except such collections or receipts after the end of such year on account of services rendered by any municipal enterprise or utility as may have been lawfully stated in the budget of a subsequent year as an anticipated revenue.

Such collections or receipts shall include all monies received upon the redemption, sale or other disposition of any tax title or lien or assessment title or lien to real estate, or upon the foreclosure, sale or other disposition of any real estate acquired by the City in connection with the enforcement or other settlement of the taxes, special assessments or other revenues, as the case may be. All such collections and receipts shall be pledged directly to the Revolving Fund and shall not be diverted or applied to any other payment or purpose or commingled with any other monies or funds. The City shall furnish to the Fiscal Agent at the time of each such payment into the Revolving Fund a duplicate deposit slip and a statement correctly showing the sources of the moneys so paid into the Revolving Fund, classified in accordance with the above paragraphs of this section, and also, as to any collections or receipts paid pursuant to paragraph (c) above, the several years for which the taxes and revenues so collected or received and

paid over were levied or anticipated, and the amount of such collections and receipts for each such year included in such payment.

SECTION 2. For the purpose of meeting expenditures or disbursements (other than the payments required by Section 1 or Section 4 of Article VI of this resolution), required by virtue of the budget, tax resolution or ordinance or tax levy in the City for any year, the City shall be entitled, and for the purpose of meeting the payments in such year required by Section 1 or Section 4 of Article VI of this resolution, the City shall be required to withdraw during such year from the Revolving Fund such sums as may be necessary for such purposes during the period of one month next ensuing after the date of such withdrawal. Upon making any such withdrawal, the City shall deliver to the Fiscal Agent a receipt for, or other document acknowledging the withdrawal of, the money so withdrawn (hereinafter referred to as "certificate of withdrawal") which shall show the amount withdrawn and the date of such withdrawal. There shall be credited upon the amount so shown in such certificate of withdrawal the amount of each payment thereafter made into the Revolving Fund of collections or receipts of taxes levied on property in the City and of other revenues anticipated for the year in which such certificate of withdrawal is dated, as shown in the statements delivered to the Fiscal Agent pursuant to Section 1 of this Article of this resolution, as the same may be corrected in accordance with any audit delivered to the Fiscal Agent pursuant to Section 3 of Article IV of this resolution. Whenever the credits so made and any other credits thereon shall equal or exceed the amount shown in such certificate of withdrawal, it shall be cancelled and returned to the City.

SECTION 3. In each year, the City shall provide budgetary appropriation for, and on or before December 15 of such year shall pay in cash into the Revolving Fund, a sum not less than the amount of all certificates of withdrawal theretofore delivered to the Fiscal Agent pursuant to Section 2 of this Article which bear dates in or before the fourth year preceding such year, less the credits thereon, and there shall be credited upon the amount so shown in such certificates of withdrawal the amounts so paid into the Revolving Fund. In the event that the City shall in any year incur losses with respect to the principal of any taxes or special assessments on property specially benefited

by remitting the same or accepting in discharge of the principal amount thereof less than the full amount due to the City, then in the next following year the City shall also provide budgetary appropriation for, and on or before December 15 of such year pay in cash into the Revolving Fund, a sum not less than the amount of the losses so incurred; *provided, however*, that this provision shall not be deemed to apply to any losses incurred in connection with the sale of foreclosed property and shall not apply to any such loss incurred with respect to special assessments or taxes on property in a transaction which complies with the following description:

(a) The transaction shall not have been in violation of the laws of the State of New Jersey;

(b) The loss shall have been with respect to taxes levied prior to January 1, 1934, or with respect to special assessments on property specially benefited on account of an improvement undertaken prior to January 1, 1937;

(c) The transaction shall have occurred prior to January 1, 1942;

(d) Prior to the transaction, the Registered Municipal Accountant referred to in Section 3 of Article IV of this resolution shall have approved the same and shall have certified that an adequate reserve exists to which such loss shall properly be charged; and

(e) At the time of the transaction, all delinquent taxes on the property levied since January 1, 1934, shall have been paid in full in cash.

Simultaneously with any such payment into the Revolving Fund, the City shall deliver to the Fiscal Agent a statement correctly showing the nature and amount of, and provision of this resolution requiring, such payment.

SECTION 4. If at the end of any year the monies held in cash in the Revolving Fund exceed $225,000, one-half of the amount of such excess shall forthwith be withdrawn from the Revolving Fund by the City and paid into the Debt Service Fund. The balance of such excess shall be held intact in the Revolving Fund until the final adoption of

the budget of the City for the following year, and to the extent that such balance is stated in such budget as an anticipated revenue for such year, such balance shall forthwith be withdrawn from the Revolving Fund by the City and applied to any expenditure authorized in such budget, but if the total amount of such balance is not so stated as an anticipated revenue in such budget, any part of such balance not so stated shall forthwith be withdrawn from the Revolving Fund by the City and paid into the Debt Service Fund.

SECTION 5. There shall be included in each budget of the City an appropriation, under the caption "Reserve for Uncollectible Taxes," in an amount not less than one-fifth of the amount of the taxes levied in the City for the next preceding year which remained uncollected at the end of such next preceding year. For the purpose of computation of the amount of said appropriation, no monies tendered to or accepted by the City in payment of taxes, special assessments on property specially benefited or other charges or liens on any property shall be deemed to constitute collection in whole or in part of taxes levied on such property for any year unless all taxes, special assessments on property specially benefited and other charges or liens on such property payable in any previous year shall have been paid or discharged, or the payment thereof lawfully provided for by installments, none of which is in arrears.

SECTION 6. In each year, the City shall levy a tax for local purposes at least equal to the aggregate amount of all appropriations included in the budget for such year, including without limitation of the foregoing the appropriation under the caption "Reserve for Uncollectible Taxes" and appropriations for any expenditures for any purpose theretofore made without appropriation or authorization, or in excess thereof, after deducting therefrom the estimated anticipated revenues for such year which estimated anticipated revenues shall not in any event be any sum or sums of money other than, or in excess of, the following:

(a) Any balance of excess monies in the Revolving Fund held therein pending adoption of the budget pursuant to Section 4 of Article VII of this resolution which is stated in such budget as an anticipated revenue;

(b) Any sum or sums of money anticipated in such budget and applicable to any lawful expenditure thereunder, certified by an officer, board, agency or commission of the State, as receivable in cash by or for the account of the City during such year under existing legislation from such officer, board, agency or commission, or from the State through such officer, board, agency or commission, free from any set-off or counter-claim;

(c) Miscellaneous revenues anticipated in such budget and applicable to any lawful expenditure thereunder, not (unless the prior written consent of the State Auditor of the State of New Jersey be had) in any instance or as to any item in an amount in excess of the amount of such miscellaneous revenues collected in cash during the next preceding year;

(d) Fees, rentals or charges for services rendered by any municipal enterprise or utility anticipated in such budget and applicable to any lawful expenditure thereunder, not in excess of the amount of such fees, rentals or charges received in cash during the next preceding year; and

(e) Collections of special assessments on property specially benefited, finally confirmed on or before the first day of such year on account of any improvement undertaken after January 1, 1937, anticipated in such budget and applicable to any lawful expenditure thereunder, not in excess of the amount thereof held in cash at the beginning of such year.

SECTION 7. (a) Taxes and special assessments on property specially benefited due to the City shall be payable in cash and the City shall not accept bonds, notes or other obligations of the City in payment or discharge of such taxes or special assessments due to the City.

(b) The City shall in 1938 and in each year thereafter, immediately after the time when such sales may, by law, be held and in any event prior to November 1 of said year, hold a complete sale of property for delinquent taxes or special assessments or other municipal charges or liens in accordance with law.

(c) The City shall at the earliest time permitted by law initiate proceedings to foreclose liens on or titles to real estate heretofore since January 1, 1931, or hereafter acquired by it at any sale or sales

for delinquent taxes or special assessments or other municipal charges or liens and shall prosecute such proceedings to a conclusion with all reasonable speed.

(d) The City shall at least once in 1938 and each year thereafter offer at public sale, in accordance with law, not later than November 1 of said year, all real estate then held in fee by the City and heretofore since January 1, 1931, or hereafter acquired by the City in connection with the foreclosure or other enforcement of taxes, special assessments or other charges or liens; *provided, however*, that this provision shall not apply to a parcel of such real estate if prior to the time of such offering the City shall have paid into the Revolving Fund, in addition to all other moneys required by this resolution to be so paid, a sum equal to the lien value of such parcel as hereinafter defined. At such offering for sale, the City may accept any legally acceptable bid for any parcel of real property so offered. At such offering for sale, the City shall accept any legally acceptable bid for any parcel of real property so offered of not less than the lien value of such parcel, being the lien value of the taxes, special assessments and other charges and liens on such parcel as of the last day of the month next preceding the acquisition of such parcel by the City, and such bid, if legally acceptable, shall be so accepted whether the total purchase price shall be payable in cash in full not later than the date of the delivery of the deed to the parcel, or in cash to the extent of twenty per centum of the purchase price not later than such date and the balance adequately secured in not more than ten equal annual installments, with interest on unpaid balances payable at least semi-annually at not less than four per centum per annum. The City may at any time within thirty days after the offering of any such real estate at public sale, accept any legally acceptable offer for any parcel of such real estate of a price not less than the highest price bid for such parcel at such public sale, or if no bid was received therefor at such public sale, then at a price exceeding the amount determined by resolution of the City Council of the City to be the fair market value of such parcel. The City may at any time accept any legally acceptable offer for any parcel of such real estate which the City would by virtue of this section have been required to accept if the offer had been made at the public sale required by this section. The proceeds of the sale of any of such real estate shall be paid into the

Revolving Fund by the City in accordance with the requirements of Section 1 of Article VII of this resolution. The City shall not sell any parcel of such real estate except as hereinabove provided.

ARTICLE VIII.

Covenants With Bondholders.

The City hereby covenants and agrees, upon the issuance of any of said Refunding Bonds, fully to carry out and perform all of the provisions of Articles IV, V, VI and VII of this resolution, and said provisions shall be a part of the contract with the holders of such Refunding Bonds, and shall be enforceable by mandamus or other appropriate action or proceeding at law or in equity instituted by the Municipal Finance Commission of the State of New Jersey, functioning in pursuance of the acts cited in Article I of this resolution, or by the holder of any Refunding Bond on behalf of all the holders of said Refunding Bonds, whether or not there shall have been any default in the payment of the principal of or interest on any such Refunding Bonds.

ARTICLE IX.

Miscellaneous Provisions.

Section 1. Wherever used in this resolution, unless the context clearly requires a different meaning:

(a) The term "City Council" shall mean the City Council of the City as presently constituted, or any other body or board hereafter constituted by whatsoever name it may be known having charge of the finances of the City;

(b) The term "year" shall mean a period beginning on January 1 and ending on December 31 next ensuing.

Section 2. Upon the retirement of any of the Term Bonds of the City described in subdivision (a) of Section 1 of Article III of this resolution, either by payment thereof in cash or by the exchange thereof for Refunding Bonds authorized by this resolution, the Sinking Fund Commission of the City shall cancel a ratable proportion of the notes, bonds or other obligations of the City then held by it and

deliver the obligations so cancelled to the City, and shall also pay to the City Treasurer a ratable proportion of any monies or funds in the custody of the said Commission. The monies or funds so paid to the City Treasurer shall be applied by him only to the payment of unpaid interest on notes and bonds owing by the City, in such manner and amount as may be determined by resolution approved by the Municipal Finance Commission of the State of New Jersey functioning in pursuance of the acts cited in Article I hereof.

Section 3. This resolution shall be published once in full within one week in the "Asbury Park Press," a newspaper published and circulating in the City and designated as the official newspaper of the City for such purpose. This resolution shall take effect immediately upon such publication, but the City shall not commence to operate under the terms and provisions of Article IV, V, VI and VII of this resolution until the first date when some of said Refunding Bonds shall be issued and delivered.

SCHEDULE B.

RESOLUTION DETERMINING THE FORM OF REFUNDING BONDS OF THE CITY OF ASBURY PARK, IN THE COUNTY OF MONMOUTH, NEW JERSEY, AND PROVIDING FOR THE SALE, DELIVERY OR EXCHANGE THEREOF.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASBURY PARK, IN THE COUNTY OF MONMOUTH, NEW JERSEY, as follows:

SECTION 1. The Refunding Bonds of the City of Asbury Park, in the County of Monmouth, New Jersey, authorized to be issued pursuant to a resolution entitled: "Resolution authorizing the issuance of Refunding Bonds of the City of Asbury Park in the County of Monmouth, New Jersey," duly certified to the City Council of the City by the Municipal Finance Commission of the State of New Jersey, acting in and for the City, shall be substantially in the following form:

(Form of Bond)

No. **UNITED STATES OF AMERICA** $

State of New Jersey County of Monmouth City of Asbury Park

REFUNDING BOND.

The City of Asbury Park, in the County of Monmouth, a municipal corporation of the State of New Jersey, for value received, promises to pay to the bearer of this bond, or if it be registered, to the registered holder, the sum of dollars ($) on the first day of December, 1966, and to pay interest thereon at the rate of four percentum (4%) per annum, semi-annually on the first days of June and December in each year from the date of this bond until it matures, upon presentation and surrender as they severally mature of the coupons therefor annexed hereto, or if this bond be registered as to both principal and interest, then to the

registered holder. Both principal and interest of this bond will be paid in lawful money of the United States of America at the office of the Asbury Park & Ocean Grove Bank, in the City of Asbury Park, New Jersey, or, at the option of the holder, at the office of the Central Hanover Bank & Trust Company, in the Borough of Manhattan, City, County and State of New York.

This bond may be registered as to principal by the holder in his name on the books of the City kept in the office of the City Treasurer, and such registration shall be noted on the back of this bond, after which no valid transfer of this bond shall be made except on said books until after registered transfer to bearer. Such registration shall not affect the negotiability of the coupons which shall continue to pass by delivery. At the request of the holder, this bond will be converted into a bond registered as to both principal and interest and the coupons annexed hereto detached and cancelled and thereafter both principal and interest shall be payable only to the registered holder.

This bond is one of an issue, the authorized principal amount of which is $10,735,199.19, the bonds of which are of like tenor except as to number and denomination, and is issued pursuant to and in full compliance with an Act of the Legislature of the State of New Jersey, entitled: "An Act concerning municipal finances," approved April 28, 1931, constituting Chapter 340 of the Laws of 1931, and the acts amendatory thereof and supplemental thereto, and by virtue of a resolution entitled: "Resolution authorizing the issuance of Refunding Bonds of the City of Asbury Park, in the County of Monmouth, New Jersey," duly certified under date of to the City Council of the City by the Municipal Finance Commission of the State of New Jersey, acting in and for the City pursuant to said Act as amended and supplemented, and duly adopted by or on behalf of said City, and published as required by law.

The bonds of the issue of which this bond is one are all entitled to the security, and the holders thereof have the rights, powers and privileges, afforded by certain special covenants and provisions contained in said resolution, to which reference is hereby made for a statement of such security, rights, powers and privileges and of the obligations of the City thereunder.

This bond is issued for the purpose of refunding a valid and outnding obligation of the City surrendered in exchange therefor, and, ase of default in payment of the principal of or interest on this d; the holder thereof shall not only have all the rights and remedies reunder of a holder thereof, but in addition shall be reinvested with h of the rights and remedies which the holder would have had were holder then the owner and in possession of the particular obligan so surrendered, as are specified in Section 2 of Article II of said olution.

The issue of bonds, of which this bond is one, is subject to redemn at the option of the City on any interest payment date as a whole in part by lot, and this bond may be so redeemed upon notice of emption, given in the name of the City by publication at least once least thirty (30) days prior to the date of redemption, in a newsper published and of general circulation in the City of New York, w York, at a redemption price of the principal amount hereof and rued interest to the date of redemption fixed in said notice. If this d be called for redemption in manner aforesaid and payment in h of the redemption price duly made or provided for, interest eon shall cease to be payable from and after the rate of redemption d in the notice of redemption.

The full faith and credit of said City of Asbury Park are hereby evocably pledged to the punctual payment of the principal and erest of this bond according to its terms.

It is hereby certified and recited that all conditions, acts and things uired by the Constitution and statutes of the State of New Jersey exist, to have happened and to have been performed, precedent to in the issuance of this bond exist, have happened, and have been formed, and that the issue of bonds of which this is one, together h all other indebtedness of said City, is within every debt and other it prescribed by the Constitution and statutes of said State.

In Witness Whereof, the City of Asbury Park, in the County of nmouth, has caused this bond to be signed in its name by its Mayor, Treasurer and City Manager under its seal affixed and attested

by its City Clerk, and the coupons hereto annexed to be authenticated by the facsimile signature of said City Treasurer and this bond to be dated the first day of December, 1937.

THE CITY OF ASBURY PARK, NEW JERSEY,

by .....
Mayor.

.....
City Treasurer.

.....
City Manager.

ATTEST:

.....
City Clerk.

(Form of Coupon)

No. $

Unless the bond hereinafter mentioned shall have been called for previous redemption and payment of the redemption price duly made or provided for, the City of Asbury Park, in the County of Monmouth, a municipal corporation of the State of New Jersey, will pay to the bearer on the first day of , 19 , the sum of dollars ($) in lawful money of the United States of America, at the office of the Asbury Park & Ocean Grove Bank, in the City of Asbury Park, New Jersey, or, at the option of the holder, at the office of the Central Hanover Bank & Trust Company, in the Borough of Manhattan, City, County and State of New York, being six months' interest then due on its Refunding Bond, dated December 1, 1937, and bearing No.

.....
City Treasurer.

(Form of Certificate of Registration)

I hereby certify that at the request of the holder of the within bond, for its conversion into a bond registered as to both principal and interest, I have this day cut off and destroyed coupons attached thereto, of the amount and value of dollars ($) each, and that the within bond is hereby converted into a registered bond, with the principal thereof and semi-annual interest thereon payable to , assignee or legal representative.

Dated , 19

City Treasurer.

The within bond has been registered as follows:

Date of Registry	Name of Registered Holder	Registered by

(Form of Certification)

IT IS HEREBY CERTIFIED that the within bond has been recorded by the Municipal Finance Commission of the State of New Jersey in the office of the State Auditor, State House, Trenton, New Jersey, as issued by virtue of a resolution duly certified by said Municipal Finance Commission to the City Council of the City of Asbury Park, in the County of Monmouth, New Jersey.

Secretary (or Authorized Representative)
Municipal Finance Commission.

SECTION 2. The fifth paragraph of the form of bond set forth in the next preceding section of this resolution shall be omitted from any of said Refunding Bonds which may not be issued directly in exchange for the bonds or notes of the City referred to in said paragraph.

SECTION 3. The City Clerk be and he hereby is authorized and directed upon two days' notice mailed to him at the City Offices, Asbury Park, New Jersey, by a representative of the Municipal Finance Commission of the State of New Jersey acting in and for the City, designated by resolution of said Commission (hereinafter referred to as "Commission representative") to cause forms of said Refunding Bonds to be printed, said bonds, in such proportions as said notice may specify, to be of the denominations of $1000, $500 and $100 each, and to present said forms of bonds to the officials hereinafter authorized and directed to execute the same.

SECTION 4. The Mayor, City Treasurer and City Manager are hereby authorized and directed, forthwith upon the presentation of the forms of said bonds to them in accordance with the next preceding section of thi resolution, to execute said bonds in accordance with this resolution and the resolution cited in Section 1 of this resolution, and the City Clerk be and he hereby is authorized and directed thereupon to affix to said bonds the seal of the City and to attest the same by his signature.

SECTION 5. Upon receipt of the approval in writing of the Municipal Finance Commission of the State of New Jersey, acting in and for the City, of the exchange of said Refunding Bonds for the bonds and notes of the City authorized to be funded or refunded by the issuance of said Refunding Bonds, and after execution of said bonds by the proper officials of the City as above directed, the City Treasurer is hereby authorized and directed to present such bonds so executed for execution by the Secretary or other authorized representative of the said Municipal Finance Commission of the form of certification endorsed on said bonds, and thereafter from time to time to exchange, issue and deliver said Refunding Bonds, or part or parts thereof, in accordance with the following sections of this resolution.

SECTION 6. Said Refunding Bonds may be issued and delivered in exchange for an equal principal amount of the bonds and notes of

the City described in Article III of the resolution cited in Section 1 of this resolution (hereinafter referred to as "old bonds"). Upon making any such issuance and delivery of Refunding Bonds, there shall simultaneously be paid by the City such part of the unpaid principal amount of said old bonds so surrendered as may not be a multiple of $100 and a sum in cash computed by adding the total unpaid interest on said old bonds so surrendered accrued to January 1, 1934, to eleven and three-quarters per centum (11.75%) of the principal amount of said old bonds, and deducting from the sum so obtained (1) the amounts of any interest on said old bonds so surrendered accrued since January 1, 1934, theretofore paid, and (2) the amount of any unpaid coupons appurtenant to said old bonds so surrendered not surrendered at or prior to the time of such payment. Upon making any such issuance and delivery of Refunding Bonds, there shall simultaneously be delivered to the City old bonds, in deliverable form, in a principal amount not less than the principal amount of such Refunding Bonds, and, if any suit, action, or proceeding has been had or is pending against the City based on or relative to such old bonds, a stipulation of dismissal or discontinuance of such suit, action or proceeding, and proof of the satisfaction, discharge or vacating of any judgment, writ, decree, order, stay or other process made or entered in such suit, action or proceeding, all in form satisfactory to counsel to the City and counsel to said Municipal Finance Commission of the State of New Jersey.

SECTION 7. The City Treasurer is hereby further authorized and directed forthwith upon the receipt of any old bonds in accordance with the next preceding section of this resolution, to cancel said old bonds by perforating, detaching or otherwise mutilating the signatures thereon and to endorse on each of said old bonds a statement correctly identifying the Refunding Bonds issued in exchange therefor. Said statement shall be in substantially the following form:

"The principal amount of the within obligation was this day funded or refunded by the issuance of Refunding Bond, dated December 1, 1937, No. _____

Dated _____, 193__."

Each such statement so endorsed shall be dated the date of receipt of the old bond and signed or initialed by said City Treasurer and the Secretary or other authorized representative of said Municipal Finance Commission. Said old bonds so cancelled and endorsed shall then be delivered by the City Treasurer to the Secretary of the said Municipal Finance Commission and said Secretary and said City Treasurer shall thereupon make and sign a registry of the same in duplicate and cause one of said duplicate originals to be filed with the said Municipal Finance Commission and the other to be filed and retained among the permanent records of the City.

SECTION 8. Upon the receipt in accordance with Section 6 of this resolution of old bonds of the City in a principal amount satisfactory to the City and the said Municipal Finance Commission, there shall be paid by the City the reasonable expenses of the Protective Committee for Security Holders of the City of Asbury Park, J. S. Rippel, Chairman, and the Committee for Bondholders of the City of Asbury Park, New Jersey, Edwin H. Barker, Chairman, incurred in contributing to the formulation, approval, acceptance and consummation of the refinancing operation of the City resulting in the issuance of said Refunding Bonds. Said payments may include reasonable compensation to the members of such Committees and shall be only in such amounts as may be agreed to by the said Municipal Finance Commission and the City or as may be determined by the New Jersey Supreme Court, or a Justice thereof. Said payments shall be made to either of said Committees only on such conditions as may be likewise agreed to or determined, including (a) receipt by the City of sworn statements, in duplicate, of the several items comprising the total of such expenses and compensation; (b) receipt in accordance with Section 6 of this resolution of all old bonds owned or controlled by said Committee and receipt by the City of assurances satisfactory to the Mayor that all such old bonds so owned or controlled have been so received; and (c) receipt by the City of releases running to the City satisfactory to the Mayor of all claims of said Committee against the City except those embodied or reserved in said Refunding Bonds.

SECTION 9. There shall be paid by the City all costs and expenses incurred by the City in connection with the refinancing operation referred to in Section 8 of this resolution, including the cost of accounting and financial services, printing, publishing, postage, insurance,

ees of escrow agents, the City's expenses for Refunding Counsel and Refunding Agent, and for legal services and disbursements rendered nd made by Hawkins, Delafield & Longfellow, Esqs., of New York ity, in connection with the preparation, examination and approval of roceedings for the issuance of the Refunding Bonds. The foregoing hall include all amounts payable to Ward Kremer, Esq., of Asbury ark, New Jersey, and Harry Cassman, Esq., of Atlantic City, New ersey, for legal services and disbursements made and rendered for he City, including participation in litigation and services in connec- ion with the issuance of the Refunding Bonds. The foregoing pay- nents shall be made only in such amounts as may be agreed to by the aid Municipal Finance Commission and the City or as may be etermined by the New Jersey Supreme Court, or a Justice thereof. here shall also be paid by the City all expenses of the said Municipal inance Commission for account of the City including accounting xpenses, counsel fees and expenses incurred in connection with itigation involving the City.

SECTION 10. All moneys held by the City in any fund, including eserve funds, if any, established pursuant to Section 211 of the Act nder which said Refunding Bonds are to be issued, or otherwise, and ncluding moneys received by the City Treasurer pursuant to Section 2 f Article IX of the resolution cited in Section 1 of this resolution, fter deducting therefrom all moneys received on account of revenues nticipated, or taxes levied for the year 1937 or any subsequent year xcept such as may be otherwise appropriated to the following pur- oses, shall be applied and are hereby appropriated to the several ayments authorized by this resolution. It is hereby determined and eclared that the several payments authorized to be made pursuant to ection 8 and Section 9 of this resolution are payments in lieu of ccrued interest owing by the City made at the request and with the pproval of the creditors of the City, and that accordingly all pay- nents authorized by this resolution are payments of principal of or nterest on the public debt of the City. $225,000 of the moneys ppropriated by this section of this resolution remaining after mak- ng or providing for all payments authorized by any other section of his resolution shall forthwith be paid into the Revolving Fund stablished by the resolution cited by Section 1 of this resolution, nd the balance of such remaining moneys shall forthwith be paid into

the Debt Service Fund established by the resolution cited in Section 1 of this resolution.

SECTION 11. All officials of the City are hereby authorized and directed to execute all such checks, vouchers and other documents and do and perform all such other acts and things as may be necessary, convenient, or desirable to carry out the purposes of this resolution and to enable the officers herein named to carry out and perform the duties herein required of them.

SECTION 12. This resolution shall take effect immediately.

NEW JERSEY SUPREME COURT.

In the Matter of PETITION OF JULIUS S. RIPPEL, ET AL., FOR THE APPROVAL OF A PLAN OF ADJUSTMENT FOR THE CITY OF ASBURY PARK, A MUNICIPAL CORPORATION.	ON PETITION ORDER APPROVING MODIFIED PLAN OF ADJUSTMENT.

This matter being opened to the court by James D. Carpenter of McDermott, Enright and Carpenter, Attorneys for Julius S. Rippel, Russell V. Adams, Frank C. Ferguson, Frank E. Quinby, William K. Paton, J. A. Rippel, W. E. Wetzel and Horace K. Corbin, constituting the Protective Committee for Security Holders of City of Asbury Park, and it appearing that said Committee, on the fourth day of January, 1936, filed on behalf of themselves and all other creditors of the municipality a petition for the approval of a plan of adjustment or composition of the claims of all creditors of the City of Asbury Park, a municipal corporation of the County of Monmouth, which on the seventh day of March, 1935, by an order entered in the Supreme Court of New Jersey, was placed under the control of the Municipal Finance Commission of the State of New Jersey, and is still under said control;

And it further appearing that on the fourth day of January, 1936, this Court took jurisdiction of the subject-matter, ordered said petition filed in the office of the Clerk of the New Jersey Supreme Court, and issued a rule to show cause pursuant to the said petition, providing for a hearing on the said petition returnable February 1, 1936, before the Honorable Joseph B. Perskie, Justice of the New Jersey Supreme Court, in the City of Atlantic City, N. J., and requiring creditors of the City of Asbury Park, and the City of Asbury Park, and the Municipal Finance Commission of the State of New Jersey, to show cause at the said time and place why a plan for the adjustment or composition of claims of all creditors of the City, which plan was submitted with and made a part of the said petition, should not be approved;

And it further appearing that due notice to all creditors of the City of Asbury Park has been published as provided by order of this Court;

And it further appearing that on the return of the said rule to show cause on February 1, 1936, a hearing was held pursuant to the prayer of the said petition, and the City of Asbury Park submitted a plan of adjustment or composition of the claims of all creditors of the said City, which said plan was filed in the said cause;

And it further appearing that on the 3rd day of February, 1937, the City of Asbury Park, by resolution duly adopted by its Mayor and Council, amended its said plan, which said amended plan was filed in said cause;

And it further appearing that depositions were taken and filed in this cause and from time to time hearings were held under the direction of the Court and in the presence of counsel for the petitioners and counsel for other creditors, and of counsel for the Municipal Finance Commission, and that counsel for petitioners proposed modifications of the petitioners' plan of adjustment or composition filed on January 4, 1936, and as a result of said hearings under the direction of this Court, said City of Asbury Park, by resolution, duly adopted a modified plan of adjustment or composition on May 28, 1937, entitled "Amended Refunding Plan of the City of Asbury Park, New Jersey," and caused said modified plan to be filed in said cause;

And it further appearing that the Municipal Finance Commission of the State of New Jersey, by a resolution duly adopted on the 1st day of June, 1937, resolved that said Amended Refunding Plan of the City of Asbury Park adopted by the City on May 28, 1937, is acceptable and will be approved by said Commission if accepted by a sufficient number of bondholders;

And the Court having held hearings on said plans filed in this cause, and having considered the modified plans filed herein and the "Amended Refunding Plan of the City of Asbury Park" adopted May 28, 1937, and having held hearings on said modified plan, and having heard the arguments of counsel for petitioners and other creditors of said City of Asbury Park and of counsel for the Municipal Finance Commission of the State of New Jersey, and of counsel for the City of Asbury Park;

And the Court being satisfied that the municipality is unable to pay in full according to their terms the claims proposed to be adjusted

or composed, and perform its public functions and preserve the value of property subject to taxation, and that the adjustment or composition proposed in the modified plan entitled "Amended Refunding Plan of the City of Asbury, New Jersey," adopted May 28, 1937, is substantially measured by the capacity of the said City of Asbury Park to pay, and that it is in the interest of all the creditors affected thereby, and that it is not detrimental to other creditors of the said City of Asbury Park;

It Is, on the 21st day of July 1, 1937, Ordered that the plan for the adjustment or composition of all claims of creditors of the City of Asbury Park as modified by direction of this Court, entitled "Amended Refunding Plan of the City of Asbury Park," adopted by resolution of the Mayor and Council of the said City on May 28, 1937, in all respects be and the same is hereby authorized and approved, and the adjustment and composition of claims against the said City of Asbury Park as provided for by the said modified plan is hereby authorized and approved, provided creditors of the said City of Asbury Park representing eighty-five per centum in amount of the indebtedness affected thereby approve the said Amended Refunding Plan in writing.

It Is Further Ordered that unless creditors of the City of Asbury Park representing eighty-five per centum of the indebtedness affected thereby approve said modified plan of adjustment or composition in writing on or before January 1, 1938, or on or before such later date to which this Court may upon application extend the time for such written approval, this order shall be void.

On motion of Ward Kremer and Harry Cassman, Attorneys for the City of Asbury Park.

Joseph B. Perskie,
J. S. C.

[fol. 20]

SCHEDULE "B"

NEW JERSEY SUPREME COURT

On Petition, Etc.

In the Matter of Petition of Julius S. Rippel, et al., for the Approval of a Plan of Adjustment for the City of Asbury Park, a municipal corporation

ORDER APPROVING MODIFIED PLAN OF ADJUSTMENT

This matter being opened to the Court by Ward Kremer and Harry Cassman, attorneys for the City of Asbury Park, a municipal corporation in the County of Monmouth; and it appearing that on the 28th day of May, 1937, the Mayor and Council of the City of Asbury Park adopted a modified plan of adjustment or composition with its creditors entitled "Amended Refunding Plan of the City of Asbury Park, New Jersey."

And it further appearing that on the 21st day of July, 1937, an order was entered in this Court in the said proceeding authorizing and approving the said Plan and the adjustment and composition of claims against the City of Asbury Park as provided for by the said modified plan, provided creditors of the City of Asbury Park representing eighty-five per centum in amount of the indebtedness affected thereby approve the said Amended Refunding Plan in writing;

And it further appearing that the said order authorizing and approving the said Plan contained a provision requiring that such written consents should be secured on or before [fol. 21] January 1, 1938, or on or before such later date to which this Court might, upon application, extend the time for such written approval;

And it further appearing that the Municipal Finance Commission of the State of New Jersey, on the 27th day of September, 1937, by resolution approved the said Plan, provided the requisite number of consents be obtained;

And it further appearing that on the 30th day of December, 1937, an order was entered in this cause extending the terms and provisions of the order entered in the said cause July 21, 1937, for a period of thirty days, or until February 1, 1938; and it further appearing that on the 29th day of January, 1938, an order was entered in this cause extending

the terms and provisions of the order entered in the said cause July 21, 1937, and the time for obtaining written consents of creditors of the City of Asbury Park as contained in the order of December 30, 1937, up to and including March 5, 1938; and it further appearing that on the 5th day of March, 1938, an order was entered in this cause extending the terms and provisions of the order entered in the said cause July 21, 1937, and the time for obtaining written consents of creditors of the City of Asbury Park as contained in the order of March 5, 1938, up to and including April 2, 1938; and it further appearing that on the 1st day of April, 1938, an order was entered in this cause extending the terms and provisions of the order entered in the said cause July 21, 1937 and the time for obtaining written consents of creditors of the City of Asbury Park as contained in the order of March 5, 1938, up to and including April 30, 1938;

And it further appearing that on the 22nd day of March, 1938, the Municipal Finance Commission of the State of [fol. 22] New Jersey, being satisfied that the holders of bonds in an amount exceeding eighty-five percentum of the indebtedness affected thereby had consented to the said Refunding Plan herein above referred to, adopted a resolution certifying to the City Council of said City of Asbury Park a resolution of said City appended to the resolution of the said Municipal Finance Commission of the State of New Jersey authorizing the issuance of refunding bonds of said City for the purpose of funding or refunding the certain bonds and notes of said City therein described and theretofore found by the said Commission to be outstanding and unpaid and to be due or to become due; and it further appearing that the said Commission in the said resolution directed that the said resolution thereto appended be forthwith adopted by the proper officials of the said City, namely, the City Council of the City of Asbury Park, and that all acts and things required by said resolution to be done or performed by any official of said City, should be forthwith done or performed by said official at the time and in the manner provided by said resolution;

And it further appearing that on the 23rd day of March, 1938, the City Council of the City of Asbury Park, at a regular meeting duly adopted the said resolution authorizing the issuance of Refunding Bonds of the City of Asbury Park, in the County of Monmouth; and it further appear-

ing that on the 24th day of March, 1938, the said resolution was published in the Asbury Park Press, a newspaper published and circulating in the City of Asbury Park, New Jersey, and that on the 25th day of March, 1938, the said resolution was published in the Progressive Citizen, a news- [fol. 23] paper published and circulating in the said City of Asbury Park;

And it further appearing that in accordance with the statute in such case made and provided the said resolution certified to the City Council by the Municipal Finance Commission on March 22, 1938, and adopted by the City Council of the City of Asbury Park, March 23, 1938, is effective thirty days after the publication thereof; and that the period of thirty days so required by the statute in such case made and provided expired April 23, 1938;

And it further appearing that on the 11th day of April, 1938, the Municipal Finance Commission of the State of New Jersey adopted a resolution approving the form of the bonds to be issued under the said Amended Refunding Plan and certified such resolution to the Mayor and Council of the City of Asbury Park, and that on the 12th day of April, 1938, the Mayor and Council of the City of Asbury Park adopted the resolution approving the form of the said bonds so certified to them by the Municipal Finance Commission of the State of New Jersey;

And it further appearing that creditors in the amount of $9,861,133.26, have consented in writing to the said Amended Refunding Plan; and the court being satisfied that the said creditors so consenting in writing to the said Amended Refunding Plan represent more than eighty-five per centum in amount of the indebtedness affected thereby;

It is, on this 29th day of April, 1938, ordered that this court determines that the City of Asbury Park, a municipal corporation in the County of Monmouth, is unable to pay in full, according to their terms, the claims proposed [fol. 24] to be adjusted or composed under the terms and provisions of the said Amended Refunding Plan and perform its public functions and preserve the value of property in the City of Asbury Park subject to taxation; that the said adjustment or composition is substantially measured by the capacity of the said City of Asbury Park to pay; that it is in the interest of all the creditors affected thereby; that it is not detrimental to other creditors of the municipality; that this court does hereby authorize and approve

such adjustment or composition as embodied in the said Amended Refunding Plan.

It is further ordered that this court shall retain jurisdiction over this proceeding in accordance with the statute in such case made and provided, and for the purpose of determining such matters as are provided under said Amended Refunding Plan for this court's determination.

It is further ordered that the said City of Asbury Park be and it is hereby authorized and empowered to receive further and additional written consents of creditors consenting to the said Amended Refunding Plan up until such time as the entire debt as set forth in the Amended Refunding Plan is refunded.

Joseph B. Perskie, J. S. C.

[fol. 25] In Supreme Court of New Jersey

[Title omitted]

Supplemental Notice of Motion to Strike Complaint—Filed January 31, 1941

To Arthur T. Vanderbilt, Esquire, Attorney for Plaintiffs:

Sir:

Please take notice that on Friday, the 31st day of January, 1941, I shall apply to the New Jersey Supreme Court at the Essex County Court House in the City of Newark, New Jersey, at ten o'clock in the forenoon, or as soon thereafter as the matter can be attended to, for an order striking the complaint in the above entitled cause; and in addition to the reasons set forth in the notice of motion in this matter dated December 26, 1940, the following reasons for striking the said complaint will be urged:

4. The complaint does not set forth a legal cause of action.

[fol. 26] 5. The complaint does not aver that plaintiffs have obtained permission of the New Jersey Supreme Court to institute the said cause of action.

Ward Kremer, Attorney for Defendant.

Dated—January 28, 1941.

Service of a copy of the within Supplemental Notice of Motion is hereby acknowledged this 29th day of January, 1941.

Arthur T. Vanderbilt, Attorney for Plaintiffs.

[fol. 27] IN SUPREME COURT OF NEW JERSEY

[Title omitted]

AFFIDAVIT OF WALTER HAIGHT—Filed January 31, 1941

STATE OF NEW JERSEY,
County of Monmouth, ss:

Walter Haight, of full age, being duly sworn according to law upon his oath, deposes and says:

I am the auditor and comptroller of the City of Asbury Park and I am familiar with the provisions of the Refunding Plan of the City of Asbury Park, which was approved by the New Jersey Supreme Court by an order dated July 1, 1937, which order provided that the said Plan should become operative provided creditors of the said city, representing eighty-five per centum in amount of the indebtedness affected thereby, should approve the said Refunding Plan in writing. On April 29, 1938, creditors of the City of Asbury Park representing in excess of eighty-five per centum in amount of the indebtedness affected thereby, having approved the said Refunding Plan in writing, an order [fol. 28] was entered in the New Jersey Supreme Court authorizing and approving the adjustment or composition embodied in the said Refunding Plan.

All of the bonds the subject of the above entitled cause, and referred to in the complaint herein, were included in the said Refunding Plan as reference thereto will show and the claims of the plaintiffs were included in the said Refunding Plan.

The bonds referred to in the First Count of the complaint were included in the said Plan and were embraced within the following item appearing on page fifteen (15) of the said Refunding Plan:

Issue	Date	Maturity	Total Issue
Consolidated Improvement Casino.	4-1-30	4-1-34	$460,000.00

The bonds referred to in the Second Count of the complaint were included in the said Plan and were embraced within the item on page fifteen (15) thereof as follows:

Issue	Date	Maturity	Total Issue
Consolidated Improvement Casino	6-1-29	12-1-33	$377,000.00

The bonds referred to in the Third Count of the complaint were included in the said Refunding Plan as reference to said page fifteen (15) will show and were included in the following item:

Issue	Date	Maturity	Total Issue
Consolidated Improvement Casino	6-1-29	12-1-34	$980,000.00

The bonds referred to in the Fourth Count of the complaint were included in the Refunding Plan as reference [fol. 29] to page fifteen (15) will show and were included in the following item:

Issue	Date	Maturity	Total Issue
Consolidated Improvement Casino	6-1-29	6-1-35	$1,000,000.00

All of the bonds the subject of the said complaint were included in the said Refunding Plan and provisions were entered to refund the said bonds as provided therein.

The said Refunding Plan (Article 2, page 4) further provided for the payment of all delinquent interest and provision was made for the payment of delinquent interest on the bonds represented, included in said Plan and owned by the plaintiffs or either of them, as reference thereto will show.

Walter P. Haight.

Sworn and subscribed to before me this 28 day of January, 1941. Mabel M. Haight, A Notary Public of N.J. (Seal.)

[fol. 30] In Supreme Court of New Jersey

[Title omitted]

Answering Affidavit of Moses W. Faitoute—Filed January 31, 1941

State of New Jersey,
County of Essex, ss:

Moses W. Faitoute, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am one of the plaintiffs in the above entitled cause and am President of the Faitoute Iron & Steel Company, which is the other plaintiff. I am duly authorized by the said corporation to make this affidavit on its behalf.

2. Neither Faitoute Iron & Steel Company nor myself have ever approved or consented to, in writing or otherwise, the refunding plan of the City of Asbury Park attached to and made a part of the affidavit of Milford G. Farley in this cause sworn to December 27, 1940, and referred to in the affidavit of Walter Haight in this cause sworn to January 28, 1941. Neither Faitoute Iron & Steel Company [fol. 31] nor myself appeared nor were we represented by agent, attorney or otherwise in any of the proceedings in the New Jersey Supreme Court referred to in said affidavits.

3. I am informed and verily believe that the refunding plan of the City of Asbury Park and the proceedings under and in connection therewith and the statute under which said proceedings were had, all as referred to in said affidavits and the notice of motion to strike the complaint herein, are not binding upon the plaintiffs and constitute no legal defense or bar to this suit and no basis in law or fact for the striking of the complaint herein because:

(a) Article 7 of Title 27 of Chapter 52 of the Revised Statutes of New Jersey (1937), being the statute referred to and relied on in the said notice of motion and affidavits, is unconstitutional and void in that it is a statute impairing the obligation of contracts in violation of Article I, Section 10 of the Constitution of the United States.

(b) Article 7 of Title 27 of Chapter 52 of the Revised Statutes of New Jersey (1937), being the statute referred

to and relied on in the said notice of motion and affidavits, is unconstitutional and void in that it is a statute impairing the obligation of contracts and deprives a party of a remedy for enforcing a contract which existed when the contract was made in violation of Article IV, Section VII, paragraph 3 of the Constitution of New Jersey.

(c) Article 7 of Title 27 of Chapter 52 of the Revised Statutes of New Jersey (1937), being the statute referred [fol. 32] to and relied on in the said notice of motion and affidavits, is unconstitutional and void in that it deprives plaintiffs of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

(d) Article 7 of Title 27 of Chapter 25 of the Revised Statutes of New Jersey (1937), being the statute referred to and relied on in the said notice of motion and affidavits, is unconstitutional and void in that it denies plaintiffs the equal protection of the laws and abridges the privileges and immunities of citizens of the United States in violation of the Fourteenth Amendment to the Constitution of the United States.

(e) Article 7 of Title 27 of Chapter 52 of the Revised Statutes of New Jersey (1937), being the statute referred to and relied on in the said notice of motion and affidavits, was rendered nugatory and inoperative and was superseded by the enactment by the Congress of the United States of an amendment to the Federal Bankruptcy Act (Act, July 1, 1898 c. 54) entitled "Composition of Indebtedness of Local Taxing Agencies" approved by Act August 16, 1937, c. 657, 50 Stat. 654 and further amended by Act June 22, 1938, c. 575, 52 Stat. 939; Act March 4, 1940, c. 41, 54 Stat. 44; and Act June 28, 1940, c. 438, 54 Stat. 667, and by reason whereof all proceedings had or purported to be had with respect to the City of Asbury Park and the obligations thereof in the New Jersey Supreme Court, as referred to in the affidavits filed herein, were rendered void and of no [fol. 33] effect after the enactment of the amendment first above referred to.

(f) Article 7 of Title 27 of Chapter 52 of the Revised Statutes of New Jersey (1937), being the statute referred to and relied on in the said notice of motion and affidavits, was rendered nugatory and inoperative and was super-

seded by the enactment by the Congress of the United States of an amendment to the Federal Bankruptcy Act (Act, July 1, 1898 c. 54) entitled "Provisions for the Emergency Temporary Aid of Public Debtors", approved by Act May 24, 1934, c. 345, 48 Stat. 798, and further amended by Act April 10, 1936, c. 186, 49 Stat. 1198, and Act April 11, 1936, c. 210, 49 Stat. 1203, and by reason whereof all proceedings had or purported to be had with respect to the City of Asbury Park and the obligations thereof, in the New Jersey Supreme Court, as referred to in the affidavits filed herein, were rendered void and of no effect after the enactment of the amendment first above referred to.

Moses W. Faitoute.

Sworn and subscribed to before me this 30th day of January, 1941. L. M. Stickel, A Notary Public of New Jersey. (Seal.)

[fol. 34] In Supreme Court of New Jersey, Essex County

Faitoute Iron & Steel Company, a corporation, and Moses W. Faitoute, Plaintiffs,

vs.

City of Asbury Park, a municipal corporation, Defendant

Arthur T. Vanderbilt, Attorney of Plaintiffs;
Ward Kremer, Attorney for Defendant.

Opinion—Filed March 28, 1941

Smith, Joseph L., *S. C. C.*

This comes on a motion of the defendant to strike the complaint filed herein as setting forth no legal cause of action. The plaintiffs' suit is to recover on bonds and interest coupons issued by the defendant and held by the plaintiffs. The grounds set forth in the motion to strike the complaint are that the complaint does not set forth a legal cause of action; that the complaint does not aver that the plaintiffs have obtained the permission of the New Jersey Supreme Court to institute the present suit; that the defendant has in operation a refunding plan controlling the plain-

tiffs' claim; that the plaintiffs are controlled by the terms and provisions of N. J. S. A. 52:27-34, *et seq.*; and that [fol. 35] the plaintiffs have not obtained permission of the New Jersey Supreme Court to institute the present suit.

The procedural propriety of the motion is questionable in view of the fact that the complaint, on its face, without the qualification of extraneous matters, does set forth a cause of action, and the grounds stated in the motion would have been stated more properly by way of an answer. However, all the relevant facts are admitted by both parties and concededly there are no issues of facts to be determined, and solely a question of law is left for determination. Under these circumstances, the court will consider the motion on the merits rather than on procedural grounds.

The defendant concedes the issuance of bonds now held by the plaintiffs; it shows, however, that on or about March 7th, 1935, it, the City of Asbury Park, was placed under the control of a Municipal Finance Commission, pursuant to N. J. S. A. 52:27-1, *et seq.*; thereafter, a plan for refunding of the bonded indebtedness of the city was filed with the New Jersey Supreme Court, pursuant to N. J. S. A. 52:27-34, *et seq.*, whereupon the Supreme Court assumed jurisdiction over the proceedings.

In due course the court approved the refunding plan, subject to the approval of the plan by 85% or more, in amount of the indebtedness affected by the plan. Subsequently, the necessary percentage of consents was obtained and the plan was put into operation on June 15th, 1938. The contention of the defendant is that the claim or interests of the plaintiffs, are governed and controlled by the said plan. Justice Perskie, in his order approving the modified plan of adjustment, under date of April 29th, 1938, states that:

[fol. 36] "It (referring to the plan) is not detrimental to other creditors of the municipality."

The said order also provides that the Supreme Court shall retain jurisdiction over the proceedings, in accordance with the statutes and for the purpose of determining such matters as are provided under the said amended refunding plan for the court's determination.

The plaintiffs contend that the statute in question, under which the proceedings in the Supreme Court were held, and

upon which would be based the defendant's defense, are unconstitutional.

Under the circumstances stated, it is not necessary to determine the constitutionality of N. J. S. A. 52:27-1,-34, *et seq.*, insofar as the provisions thereof, in abrogation of contractual rights of plaintiffs, are concerned. The statute in question, 52:27-38, provides that the Supreme Court shall retain jurisdiction over the proceedings even after the entry of the order approving the adjustment; that thereafter no creditor shall bring action without the permission of the Supreme Court. In compliance with this statute, our Supreme Court, under the order of Mr. Justice Perskie, has accepted and retained jurisdiction over the proceedings, even as to subsequent actions,

"In accordance with the statute in such cases made and provided—".

In the face of our Supreme Court having assumed jurisdiction over the matter and having expressly retained such jurisdiction for further proceedings, this court will require compliance with the provisions of that order, and with the provisions of the statute requiring that the permission of [fol. 37] the Supreme Court be obtained prior to the bringing of such an action. Such permission concededly lacking in the case, the motion to strike the complaint will be granted; an order will be entered accordingly.

(Signed) Joseph L. Smith, Supreme Court Commissioner.

March 27th, 1941.

IN SUPREME COURT OF NEW JERSEY

[Title omitted]

ORDER DISMISSING COMPLAINT—Filed April 5, 1941

This matter being opened to the Court by Ward Kremer, attorney for the defendant; and it appearing that a complaint was filed by the plaintiffs in the above entitled cause, and a motion having been made to strike the complaint; and the matter having come on for argument before this Court on the 31st day of January, 1941; and the Court

[fol. 38] having heard the arguments of counsel, and having considered the matter, and being satisfied that the said complaint should be stricken:

It is on this 4th day of April, 1941, ordered that the complaint filed by the plaintiffs in the above entitled cause be and the same is hereby struck out, and that the said suit be and the same is hereby dismissed with costs.

Joseph L. Smith, Circuit Court Judge and Supreme Court Commissioner.

Entered on Motion of

Ward Kremer, Attorney for Defendant.

I hereby consent to the within Order as to form.

Arthur T. Vanderbilt, Attorney for Plaintiffs.

[fol. 39] In Supreme Court of New Jersey

[Title omitted]

Rule for Final Judgment—Filed April 9, 1941

This matter being open to the Court by Ward Kremer, attorney for the defendant; and it appearing that a complaint was filed by the plaintiffs in the above entitled cause, and that a motion was made to strike the complaint; and it further appearing that on the 4th day of April, 1941 an order was entered in the cause striking out the said complaint and dismissing the said suit;

It is, therefore, on this 9th day of April, 1941, ordered that judgment final be entered in favor of the defendant and against the plaintiffs in the above entitled cause, with costs.

On Motion of

Ward Kremer, Attorney for Defendant.

Entered, April 9, 1941.

I hereby consent to the within rule as to form.

Arthur T. Vanderbilt, Attorney for Plaintiffs.

[fol. 40] IN SUPREME COURT OF NEW JERSEY

Action at Law

Judgment for Defendant on Striking Out Plaintiffs' Complaint

Ward Kremer, Attorney.

FAITOUTE IRON & STEEL COMPANY, a Corporation, and MOSES W. FAITOUTE, Plaintiffs,

vs.

CITY OF ASBURY PARK, a Municipal Corporation, Defendant

JUDGMENT—Entered April 9, 1941

Afterwards upon proceedings duly had according to the Statute and the rules of Court, the Court ordered said complaint stricken out and the suit dismissed with costs.

Whereupon it is adjudged that the complaint of the plaintiffs be dismissed, and that the defendant City of Asbury Park, a municipal corporation, do recover of the said plaintiffs Faitoute Iron & Steel Company a corporation and Moses W. Faitoute, its costs, which have been taxed at the sum of Fifty-two dollars.

Costs $52.00

Judgment entered and signed April 9, 1941.

Thomas J. Brogan, Chief Justice.

[fol. 41] IN COURT OF ERRORS AND APPEALS OF NEW JERSEY, MAY TERM, 1941

No. 27

FAITOUTE IRON & STEEL COMPANY, a Corporation and MOSES W. FAITOUTE, Appellants,

v.

CITY OF ASBURY PARK, a Municipal Corporation, Respondent

Submitted May 1941. Decided Sep. 19, 1941

On appeal from Supreme Court

For appellant, Arthur T. Vanderbilt, John A. Ackerman, G. Dixon Speakman.

For respondent, Ward Kremer.

OPINION—Filed September 19, 1941

The opinion of the court was delivered by

BODINE, J.:

The appeal is from an order striking the complaint. It contained four counts. The corporation and the individual plaintiffs are both residents of this state and are the owners of certain bonds issued by the defendant municipality which are in default and have not been paid as agreed. The city moved to strike the complaint, in that the city had in operation an approved refunding plan and the payment of the bonds in suit was controlled thereby pursuant to N. J. S. A. 52:27-1, et seq. and N. J. S. A. 52:27-34 et seq., and lastly that permission of the New Jersey Supreme Court, a statutory requisite, to the institution of the present proceeding had not been obtained.

It appears that on March 7, 1935, the City of Asbury Park was placed under the control of the Municipal Finance Commission pursuant to the provisions of N. J. S. A. 52:27-1 et seq. The city was, at that time, in default in the payment of interest on its bonded indebtedness. On February 1, 1936, a plan for the refunding of its bonded debt was filed in the Supreme Court pursuant to the terms and provisions of N. J. S. A. 52:27-34 et seq. and the court took jurisdiction of the proceedings. The plan provided for [fol. 42] the refunding of $10,750,000 of outstanding bonds and included among the bonds to be refunded were the bonds mentioned in the complaint. The plan, as amended, was approved by an order dated July 21, 1937. The order provided that the plan should, before becoming effective, be approved by creditors representing eighty-five per centum in amount of the indebtedness affected and approval to be evidenced in writing, in accordance with the terms and provisions of the statute in such case made and provided (N. J. S. A. 52:27-38).

On September 28, 1937, the Municipal Finance Commission of this State, by resolution, approved the amended plan, providing the requisite number of creditors should consent thereto in accordance with the statute.

On April 29, 1938, creditors representing in excess of eighty-five per centum in amount of the indebtedness affected consented to the plan, so that an order was then entered in the court approving the refunding plan and ap-

proving the adjustment or composition therein contained in accordance with the statute (N. J. S. A. 52:27-36).

The refunding plan was put into operation June 15, 1938, and the bondholders, who had consented in writing to the terms and provisions of the refunding plan, exchanged their outstanding bonds for new bonds issued to them in accordance with the terms of the plan.

The plan seems to have been fair and in all respects equitable.

The first question for us to determine is: Could the court strike the complaint which alleged a perfectly good cause of action and, which, without proof of the refunding plan, would have stood?

The adoption of the refunding plan, under the circumstances of this case, was or was not a defense which barred the action. Such a defense, since it goes to the whole [fol. 43] action, should have been raised by answer. The complaint, as before noted, did not fail to state a cause of action and it was not sho-n. The statute provides when a complaint may be struck (N. J. S. A. 2:27-125). A motion to strike, like a common law demurrer, admits every fact well pleaded; so it is a curious departure to strike a complaint because of allegations contained in affidavits filed by the moving party. The proper practice is suggested in the following cases: Gross v. New York C. R. R. Company, 99 N. J. L. 414; Brooks v. Metropolitan Life Insurance Company, 70 Id. 36; Fidelity Union Trust Company v. Pavlovsky, 17 N. J. Misc. 10; Koewing v. West Orange, 89 N. J. L. 539; Tanis v. Passaic County, 123 Id. 485; Lully v. National Surety Company, 106 Id. 81, 83.

The point is also made that the affidavits used state opinions and not fact. This, of course, is ordinarily a fatal defect. The real question was the constitutionality of the refunding act. The material facts in the case are not in dispute. We will treat the pleadings as though amended and consider the merits since the question presented is one which should be speedily determined. If there had been a disputed fact issue the court, in the absence of consent, could not have passed upon the merits. Standard Radio Corporation v. Triangle Radio &c., 125 N. J. L. 131.

This brings us to the constitutional question. Appellant argues that the composition statute (N. J. S. A. 52:27-34, 39)

is unconstitutional since it impairs the obligation of contract. We have held its predecessor not faulty. Hourigan v. North Bergen Township, 113 N. J. L. 143.

Mr. Justice Heher, in that case, said of the statute: "The act confers upon the finance commission, in respect of the municipality's financial affairs, powers somewhat akin to those exercised by receivers of insolvent corporations. * * * Its primary purpose is to keep intact the corporate structure, and to continue municipal function until re-[fol. 44] habilitation can be effected. This is, of necessity, a proper legislative function, and the rights of creditors, in such a situation, are secondary. It is a proper exercise of police power. It is a well established doctrine that the interdiction of statutes impairing the obligation of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public though contracts entered into between individuals may thereby be affected." Hourigan v. North Bergen Township, 113 N. J. L. 149.

N. J. S. A. 52:27-35 is as follows: "It is declared that this chapter is intended by the legislature to meet the public emergency arising from a default in the payment of municipal and school district obligations and the resulting impairment of public credit, requiring intervention by the state to provide for the payment of existing obligations in such a way as to cause the least embarrassment to property owners as taxpayers, and that this chapter is remedial in nature and the powers hereby granted shall be liberally construed."

At the time of the adoption of the plan, pursuant to the statute, the credit of Asbury Park had suffered greatly. The bonds issued to the plaintiffs long before the enactment of the statute had little value. The new bonds issued under the plan are not in default and there is a very substantial market for them.

It is argued that a municipal bankruptcy act is within the exclusive jurisdiction of Congress. United States v. Bekins, 304 U. S. 27. The statute there approved was passed in 1937 (50 Stat. 654). Our statutes were of 1931-1933 origin.

The court proceedings thereunder were initiated February 1, 1936. No obligation of contract was discharged [fol. 45] but provision was made, under the supervision

of competent judicial authority, for the collection of the debts owed by a municipality then in default by a fair means. How little the bondholder's right is changed is illustrated by Lyon v. Elizabeth, 43 N. J. L. 158; Piscataway Two. v. First National Bank of Dunellen, 111 Id. 412; Vanderpool v. Mount Ephriam, Id. 423.

The holder of a defaulted municipal bond, before the statute, could take judgment and enforce payment only by mandamus, a discretionary writ. Under the plan in question, a bondholder secures a new remedy for an existing right—a remedy uniform to all in the same class and well within the legislative power. If we assume the act had not been passed and all bondholders had secured judgments, they would then have had to go to the Supreme Court for writs of mandamus to secure payment. The Court would, no doubt, have provided some means for enforcing the judgments so as to do no irreparable public injury. What more appropriate than a legislative plan to secure payment under the supervision of a commission and the court. The plan is fair alike to the bondholders and the citizens dependent upon good government. Of course, priorities cannot be destroyed under such a plan. State ex rel. Phelps v. Fort Lee, 14 N. J. Misc. 895, affirmed 191 Atl. Rep. 836.

Lastly, we cannot regard the federal enactment as one that puts to sleep the state power to provide an equitable means for the collection of municipal obligations, or as invalidating a prior proceeding taken under a state statute in good faith. It is not to be supposed that the sovereign may not provide a means which insures payment of defaulted municipal obligations in an orderly manner.

The judgment is affirmed with costs.

[File endorsement omitted.]

[fol. 46] IN COURT OF ERRORS AND APPEALS OF NEW JERSEY

Action at Law

On Appeal from the New Jersey Supreme Court

FAITOUTE IRON & STEEL COMPANY, a corporation, and MOSES W. FAITOUTE, Plaintiffs-Appellants,

vs.

CITY OF ASBURY PARK, a municipal corporation, Defendant-Respondent

ORDER OF AFFIRMANCE AND REMITTITUR TO NEW JERSEY SUPREME COURT—Filed October 7, 1941

This cause having been duly argued at the May Term 1941 of this Court by Arthur T. Vanderbilt, John A. Ackerman, and G. Dixon Speakman, of counsel for the plaintiffs-appellants, and by Ward Kremer, of counsel for the defendant-respondent, and the Court having considered the same and finding no error in the record and proceedings in the Supreme Court:

It is, thereupon, on this 19th day of September, in the year of our Lord one thousand nine hundred and forty-one, Ordered and Adjudged that the judgment of the Supreme Court removed by the appeal in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said Court.

On motion of Ward Kremer, Of Counsel for the Defendant-Respondent.

[fol. 46a] [File endorsement omitted.]

[fol. 47] IN THE SUPREME COURT OF THE UNITED STATES

FAITOUTE IRON & STEEL COMPANY, a corporation, and THE HOWARD SAVINGS INSTITUTION, a corporation of the State of New Jersey, Florence W. Faitoute, Claire Faitoute White, and William G. Carter, Executors of the Estate of Moses W. Faitoute, Plaintiffs-Appellants,

vs.

CITY OF ASBURY PARK, a municipal corporation, Defendant-Respondent

PETITION FOR APPEAL FROM THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY TO THE SUPREME COURT OF THE UNITED STATES—Filed December 20, 1941

Considering themselves aggrieved by the final decision and judgment of the Court of Errors and Appeals of the State of New Jersey in the above entitled cause, petitioners, Faitoute Iron & Steel Company, a corporation of the State of New Jersey, and The Howard Savings Institution, a corporation of the State of New Jersey, Florence W. Faitoute, Claire Faitoute White and William G. Carter, the Executors of the Estate of Moses W. Faitoute, hereby pray that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of bond thereon, and to that end respectfully show:

1. Your petitioners are the plaintiffs-appellants in the above entitled cause. The petitioners, The Howard Savings Institution, a corporation of the State of New Jersey, Florence W. Faitoute, Claire Faitoute White and William G. Carter are the executors of the Estate of Moses W. Faitoute, whose death occurred after the institution of this suit, and said petitioners have been substituted as party plaintiffs in his stead.

[fol. 48] 2. On the 14th day of December, 1940, your petitioner, Faitoute Iron & Steel Company, and said Moses W. Faitoute filed a complaint in the New Jersey Supreme Court seeking to recover on certain overdue bonds and coupons owned and held by them which said bonds and coupons were issued by and obligations of the respondent, the City of Asbury Park, a municipal corporation organized and existing under and by virtue of the laws of the State of New Jersey. Said respondent defended said suit on the

ground that it had in operation a plan of composition adopted in accordance with Article 7 of Chapter 27 of Title 52 of the Revised Statutes of New Jersey, comprising sections 52:27-34 through 52:27-39, and that by virtue of said plan and said statute, appellants' suit to recover on said bonds and coupons could not be maintained. Judgment was rendered therein by said New Jersey Supreme Court in favor of said respondent.

3. An appeal was taken from said judgment to the Court of Errors and Appeals of the State of New Jersey, the court of last resort in all causes in the State of New Jersey, and said judgment was affirmed by said Court of Errors and Appeals on the 19th day of September, 1941.

4. There is error in the final judgment and record of the proceedings in this cause in the said Court of Errors and Appeals of the State of New Jersey whereby your petitioners are aggrieved in that in the decision and judgment of the said Court there is drawn in question the validity of a statute of the State of New Jersey, namely Article 7 of Chapter 27 of Title 52 of the Revised Statutes of New Jersey, comprising sections 52:27-34 through 52:27-39, on the ground of its being repugnant to and in contravention of the Constitution of the United States in that said statute, [fol. 49] as construed and applied to permit the compulsory composition of the debts of a municipal corporation, which debts were incurred and created before the enactment of the statute, impairs the obligation of contracts in violation of Article I, Section 10 of the Constitution of the United States, and deprives your petitioners of property without due process of law and denies your petitioners the equal protection of the laws and abridges the privileges and immunities of citizens of the United States in violation of the Fourteenth Amendment to the Constitution of the United States, and that the decision and judgment of the said Court was in favor of the validity of said statute.

5. Therefore, in accordance with Section 237 (a) of the Judicial Code, and in accordance with the Rules of the Supreme Court of the United States, your petitioners respectfully show this Court that the case is one in which, under the legislation in force when the Act of January 31, 1928 was passed, to wit, under Section 237 (a) of the Judicial Code, a review could be had in the Supreme Court of the United States on a writ of error, as a matter of right.

Wherefore, petitioners pray for the allowance of an appeal from the aforesaid final judgment of the Court of Errors and Appeals of the State of New Jersey to the Supreme Court of the United States in order that the said decision and judgment of the Court of Errors and Appeals of the State of New Jersey may be examined and reversed, and further pray that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Court of Errors and Appeals of the State of New Jersey, may be sent to the Supreme Court of the United States, as provided by law. The errors upon which [fol. 50] petitioners claim to be entitled to an appeal are those hereinabove indicated and which are more fully set out in the Assignment of Errors filed herewith.

Arthur T. Vanderbilt, Attorney for Petitioners.

Dated: December 15, 1941.

[fol. 50a] Order Denying Petition for Appeal

The within petition for appeal is hereby denied because of lack of jurisdiction this 15 day of December, 1941.

Luther A. Campbell, Chancellor of the State of New Jersey and President Judge of the Court of Errors and Appeals in the Last Resort in all Causes.

[File endorsement omitted.]

[fol. 51] In Supreme Court of the United States

[Title omitted]

Assignment of Errors—Filed December 20, 1941

The said Faitoute Iron & Steel Company, a corporation, and The Howard Savings Institution, a corporation of the State of New Jersey, Florence W. Faitoute, Claire Faitoute White and William G. Carter, Executors of the Estate of Moses W. Faitoute, assign the following errors in the record and proceedings in the said cause:

1. The judgment of the Court of Errors and Appeals of the State of New Jersey in affirming the judgment of the New Jersey Supreme Court and in holding that the provisions of Article 7 of Chapter 27 of Title 52 of the Re-

vised Statutes of New Jersey, comprising Sections 52:27-34 through 52:27-39, and the adoption of a plan of composition by respondent in accordance therewith operated to prevent suit to enforce recovery on petitioners' bonds and coupons is illegal and erroneous because said statute was enacted, and said plan was adopted, after the issuance of said bonds and coupons and said petitioners did not approve or consent to said plan nor did they appear in the proceedings in connection with the adoption of said plan. The statute as construed and applied by the Court [fol. 52] of Errors and Appeals of the State of New Jersey is unconstitutional in that it impairs the obligation of contracts in violation of Article I, Section 10 of the Constitution of the United States.

2. The judgment of the Court of Errors and Appeals of the State of New Jersey in affirming the judgment of the New Jersey Supreme Court and in holding that the provisions of Article 7 of Chapter 27 of Title 52 of the Revised Statutes of New Jersey, comprising Sections 52:27-34 through 52:27-39, and the adoption of a plan of composition by respondent in accordance therewith operated to prevent suit to enforce recovery on petitioners' bonds and coupons is illegal and erroneous because said statute was enacted, and said plan was adopted, after the issuance of said bonds and coupons and said petitioners did not approve or consent to said plan nor did they appear in the proceedings in connection with the adoption of said plan. The statute as construed and applied deprives petitioners of property without due process of law, denies petitioners the equal protection of the laws and abridges the privileges and immunities of citizens of the United States in violation of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, on account of the errors hereinbefore assigned, petitioners pray that the said judgment of the Court of Errors and Appeals of the State of New Jersey dated the 19th day of September, 1941, in the above entitled cause affirming the judgment of the New Jersey Supreme Court may be reversed, set aside and for nothing holden.

Dated: December 15, 1941.

Arthur T. Vanderbilt, Attorney for Appellants.

[fol. 52a] [File endorsement omitted.]

[fol. 53] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed December 20, 1941

The plaintiffs-appellants in the above entitled cause having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Court of Errors and Appeals of the State of New Jersey on the 19th day of September, 1941, and having presented and filed its petition for appeal, assignment of errors, prayer for reversal and statement as to jurisdiction, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided;

It is Ordered that, an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Court of Errors and Appeals of the State of New Jersey in the above entitled cause as provided by law, and it is further Ordered that the Clerk of the Court of Errors and Appeals of the State of New Jersey shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of [fol. 54] the United States, so that he shall have the same in said Court within 40 days of this date.

And it is further Ordered that security for costs on appeal be fixed in the sum of Two hundred dollars ($200).

Owen J. Roberts, Associate Justice of the Supreme Court of the United States.

Dated: December 16, 1941.

[fol. 54a] [File endorsement omitted.]

[fol. 55] Citation in usual form showing service on Ward Kremer omitted in printing.

[fol. 56] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

CERTIFICATE OF DEPOSIT OF SECURITY FOR COSTS—Filed December 24, 1941

I, Charles Elmore Cropley, Clerk of the Supreme Court of the United States, do hereby certify that on this Nine-

teenth day of December, 1941, there was deposited with me by the plaintiffs-appellants in the above entitled cause the sum of $200 as security for costs, being the amount fixed in the order allowing the appeal in the above cause dated December 16, 1941.

Charles Elmore Cropley, Clerk of the Supreme Court of the United States. By E. P. Cullinan, Assistant.

[fol. 56a] [File endorsement omitted.]

[fol. 57] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO RECORD—Filed January 9, 1942

It is hereby stipulated by and between the respective parties hereto by their attorneys that the Clerk of the New Jersey Court of Errors and Appeals prepare a transcript on appeal herein including the following portions of the record to wit:

1. Summons.
2. Complaint.
3. Affidavit of Merits.
4. Notice of Motion
5. Affidavit of Milford G. Farley
   (A) Schedule A
   (B) Schedule B.
6. Supplemental Notice of Motion.
7. Affidavit of Walter Haight.
8. Answering affidavit of Moses W. Faitoute.
9. Opinion of Supreme Court Commissioner.
10. Order Dismissing Complaint.
11. Rule for Final Judgment.
12. Judgment.

[fol. 58] 13. Notice and Grounds of Appeal.

14. Opinion of New Jersey Court of Errors and Appeals.
15. Order of Affirmance and Remittitur to Supreme Court.
16. Petition for Appeal to the Supreme Court of the United States.
17. Assignment of Errors.
18. Statement of Basis of Jurisdiction.
19. Order Allowing Appeal.
20. Citation.

21. Proof of Service.
22. Statement Referring to Rule 12, paragraph 3, and Proof of Service thereon.
23. Certificate of Deposit of Security for Costs.

Arthur T. Vanderbilt, Counsel for Plaintiffs-Appellants. Ward Kremer, Counsel for Defendant-Respondent.

[fol. 58a] [File endorsement omitted.]

[fol. 59] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 60] In Supreme Court of the United States

Statement of Points and Designation of Record—Filed January 27, 1942

Come now the appellants and adopt their assignments of error as their statement of points to be relied upon, and represent that the whole of the record, as filed, is necessary for the consideration of the case.

Dated: January 21, 1942.

Arthur T. Vanderbilt, Counsel for Appellants.

[fol. 60a] [File endorsement omitted.]

[fol. 61] Supreme Court of the United States

Order Noting Probable Jurisdiction—February 9, 1942

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: File No. 46,224 New Jersey, Court of Errors and Appeals, Term No. 896. Faitoute Iron & Steel Company, The Howard Savings Institution, Florence W. Faitoute, et al., Appellants, vs. City of Asbury Park, a Municipal Corporation of the State of New Jersey. Filed January 23, 1942. Term No. 896 O. T. 1941.